Supreme Court, U.S.
FILED

021442 MAR 28 2003

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No.

In the Supreme Court of the United States

PLATINUM CAPTITAL, INC.,

Petitioner,

v.

SYLMAR PLAZA, L.P., A CALIFORNIA LIMITED PARTNERSHIP, STEVEN HENRY HORNWOOD, AKA STEVEN H. HORNWOOD, AND ROBERTA MAY HORNWOOD, AKA ROBERTA HORNWOOD, AND RITA HOLTZMAN HORNWOOD, AKA RITA HORNWOOD,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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120 pp

QUESTION PRESENTED

The Bankruptcy Reform Act of 1978 permits debtors to cure and reinstate defaulted obligations as part of the Chapter 11 reorganization process. §§ 11 U.S.C. § 1124(2). Under this provision, debtors may avoid certain matured contractual obligations and pay the claimant under the reorganization plan as if no default had occurred. Section 1129(a)(3) of the Bankruptcy Reform Act of 1978 requires that every Chapter 11 plan be "proposed in good faith and not by any means forbidden by law." Courts have traditionally held that the good faith standard requires that a plan of reorganization achieve a result consistent with the objective and purposes of the Bankruptcy Code. The Ninth Circuit held in this case that a debtor who filed a Chapter 11 plan solely to take advantage of the provisions of § 1124(2), nevertheless satisfied the good faith standard of § 1129(a)(3).

The question presented is whether a Chapter 11 reorganization plan satisfies the good faith standard of the Bankruptcy Code where the only purpose for filing the plan was to avoid a contractual obligation to one creditor and where the sole beneficiary of such avoidance is the debtor.

PARTIES TO THE PROCEEDING

Petitioner

Petitioner is Platinum Capital, Inc., a Delaware corporation doing business in California. Platinum Capital, Inc. has no parent corporations and there is no publicly held company that owns 10 percent or more of the stock of Platinum Capital, Inc.

Respondents

Respondents are Sylmar Plaza, L.P., a California Limited Partnership, Steven Henry Hornwood, aka Steven H. Hornwood (deceased), Roberta May Hornwood, aka Roberta Hornwood, and Rita Holtzman Hornwood, aka Rita Hornwood.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit Court of Appeals opinion was selected for publication and is reported at 314 F.3d 1070 (App. A). The Bankruptcy Appellate Panel opinion was not published (App. B). The Bankruptcy Court order was not published (App. C).

STATEMENT OF JURISDICTION

The judgment of the Ninth Circuit Court of Appeals was entered on December 30, 2002. The Ninth Circuit affirmed the judgment of the Ninth Circuit Bankruptcy Appellate Panel entered on December 12, 2000 (BAP No. CC-00-1277-KMoB), affirming the order of confirmation of the Debtors' joint Chapter 11 Plan of Reorganization ("the Plan of Reorganization" or "the Plan"), entered on April 20, 2000, in Bankruptcy Chapter 11 Case Nos. LA 99-33188-AA, LA 99-37658-AA, LA 99-37289-AA. The Ninth Circuit had jurisdiction over the appeal pursuant to 28 U.S.C. §§ 158(d), which grants the courts of appeal jurisdiction over appeals of all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of 28 U.S.C. § 158, including decisions of the Bankruptcy Appellate Panel of the Ninth Circuit.

The jurisdiction of this court is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

A. 11 U.S.C. § 1129(a)(3), requiring that the court only confirm a plan of reorganization if it has been proposed in good faith. (App. D)

B. 11 U.S.C. § 1124(2), defining as unimpaired a class of claims whose default has been cured, and therefore enabling debtors in Chapter 11 reorganizations to "cure and reinstate" defaults. Under 11 U.S.C. § 1124(2), a debtor who defaulted and triggered an increased or "default" interest may "cure and reinstate" the default, thus also eliminating the increased interest rate. (App. E)

STATEMENT OF THE CASE

Petitioner was the holder of a note secured by a deed of trust on real property owned by Respondent Sylmar Plaza LP ("Sylmar"). The note provided for a base interest rate of 8.87 percent, increasing to 13.87 percent in the event of a default. The note was personally guaranteed by each of the individual respondents.

Sylmar defaulted on the note in 1997, resulting in a judicial foreclosure action filed in the Los Angeles Superior Court as Case No. BC193076. After a three-day judicial foreclosure trial, the Superior Court issued a notice to the parties that it intended to rule in favor of Petitioner. Before judgment could be entered, however, Sylmar initiated its Chapter 11 case. When Petitioner attempted to get a judgment entered against the individual Respondents, they initiated their own Chapter 11 cases.

On December 28, 1999, Respondents filed their First Amended Joint Disclosure Statement and Plan of Reorganization.

On April 19, 2000, the Bankruptcy Court held a hearing on the confirmation of Respondents' Plan. The operative provisions of the Plan were as follows: 1) most creditors would continue receiving regularly scheduled payments as they had both prior to the commencement and during the pendency of Respondents' bankruptcy cases; 2) Petitioner's note would be paid off, except for the approximately $1 million in accrued default interest; 3) a few minor disputed claims, held primarily by attorneys who represented Respondents in the state court litigation, would be resolved through the objections to claims process, but all allowed claims would be paid the amount allowed plus interest at 10 percent from the petition date; and, 4) the Reorganized Debtors would retain a direct or beneficial interest in assets having a value in excess of $40 million and a net equity in excess of $15 million, plus income in excess of $80,000 per month.

Petitioner objected to the confirmation of Respondents' Plan. The Bankruptcy Court refused to consider the good faith standard of 11 U.S.C. § 1129(a)(3) in conjunction with the cure and reinstatement provisions of 11 U.S.C. § 1124. The Order confirming Respondents' Plan was entered on April 20, 2000.

On appeal, the Bankruptcy Appellate Panel affirmed the confirmation of Respondents' joint Chapter 11 plan, after conceding that the Chapter 11 cases were filed for no other reason than to permit Respondents to take advantage of the cure and reinstatement provisions of 11 U.S.C. § 1124(2) for the benefit of no one other than Respondents. The Ninth

Circuit affirmed, concluding that Petitioner's arguments relating to the good faith standard of 11 U.S.C. § 1129(a)(3) amounted to a request that the Circuit adopt a "*per se*" rule for good faith under the Bankruptcy Code.

REASONS FOR GRANTING THE PETITION

I. The Decision of the Ninth Circuit Creates a Dangerous Precedent That Encourages Abusive Single-Purpose Chapter 11 Plans

The Ninth Circuit framed the issue as follows: Should a *per se* rule be adopted precluding solvent debtors from curing default interest? Referring to *In re Entz-White Lumber & Supply, Inc.*, 850 F.2d 1338 (9th Cir. 1988) and *In re Udhus*, 218 B.R. 519 (Bankr. 9th Cir. 1998) (allowing the cure of default interest), the court declined to impose such a rule.

The issue of this case is whether it is consistent with the good faith standard of § 1129(a)(3) for wealthy debtors to hijack the Chapter 11 process for the sole purpose of modifying the claim of one creditor, thereby achieving a redistribution of assets from that creditor to themselves. In more basic terms, this case clearly implicates the policy question of using Chapter 11 for goals having nothing to do with the reorganization of a financially troubled enterprise, particularly where the debtors brazenly admitted to the Bankruptcy Court that their Chapter 11 cases were filed only to artificially discount Petitioner's claim using the provisions of 11 U.S.C. § 1124(2). Such a result flies in the face of federal case law history.

The primary purpose of Chapter 11 is more focused than the general objectives and goals of bankruptcy: the

rehabilitation of debtors. *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984).

> "Chapter 11 embodies a policy that it is generally preferable to enable a debtor to continue to operate and to reorganize its business rather than simply to liquidate a troubled business. . . . [C]ontinued operation can save the jobs of employees, the tax base of communities, and generally reduce the upheaval that can result from termination of a business."

Collier Bankruptcy Manual § 1100.01 (3d ed. 2002).

Chapter 11 is available to permit a debtor to "restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders...." H.R. Rep. No. 595, 95th Cong., 2nd Sess. 220, reprinted in 1978 U.S.C.C.A.N. 5787, 5963, 6179. "By permitting reorganization, Congress anticipated that the business would continue to provide jobs, to satisfy creditors' claims, and to produce a return for its owners." *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983) (*citing* H.R. 95-595, p. 220).

The reorganization plan in this case was not aimed at restructuring the financial affairs of the debtors. Rather, it was aimed only at restructuring the claim of Petitioner. The reorganization plan in this case did not reallocate resources to a common pool for the benefit of all creditors. Rather, it reallocated $1 million from the claim on one creditor right into the pockets of the debtors.

There is no question about the propriety of using the provisions of 11 U.S.C. § 1124(2) as part of an effective reorganization under Chapter 11. Here, however, the debtors used the Chapter 11 process for the sole and specific purpose of invoking the provisions of 11 U.S.C. § 1124(2), under circumstances where they were the only beneficiaries.

The distinction between debt-reduction incident to reorganization and reorganization for the sole purpose of debt reduction was clearly recognized by the bankruptcy court in the case of *In re Consolidated Operating Partners. L.P.*, 91 B.R. 113, 117 (Bankr. D. Colo. 1988). In *Consolidated*, First Interstate Bank of California and First Republic Bank of Dallas ("the Lenders") argued that the debtor was solvent, and that the equities dictated payment of contract rate interest to the creditor. The court agreed, holding:

> "The equities of this case do not favor any deviation from the imposition of the Late Payment Rate. The benefit derived from any reduction in the contract rate would not inure to the creditors but instead would be a windfall to the debtor. Such a result would mean that any solvent debtor seeking to avoid the cost of default rate interest could file for Chapter 11. No such result was intended by Congress. Under the circumstances of this case, the debtor should be held to the Late Payment Rate agreed to prior to the debtor's bankruptcy filing."

Here, the Ninth Circuit missed the distinction completely and held that the Bankruptcy Code gives debtors the unfettered right to "cure and reinstate" an obligation in order to avoid default interest, citing *In re Entz-White Lumber*

& Supply, Inc., 850 F.2d 1338 (9th Cir. 1988) and *In re Udhus*, 218 B.R. 519 (Bankr. 9th Cir. 1998).

First, both *Entz-White* and *Udhus* limited their analysis to the provisions of 11 U.S.C. § 1124. There was no discussion of the good faith standard of 11 U.S.C. § 1129(a)(3) in either case. Second, this is a gross oversimplification that leads directly to bankruptcy abuse.

II. The Decision of the Ninth Circuit Court Conflicts with Decisions of Other Circuits and with the Decisions of the United States Supreme Court

The Ninth Circuit in effect held as follows: a solvent debtor who is capable of paying its debts in full may avoid that obligation by filing a plan of reorganization that benefits no creditors, no third parties, no employees, etc., and only reduces the default interest to be paid to a single creditor. In other words, the Ninth Circuit held that elimination of default interest, as an end in itself, is a legitimate goal of the Bankruptcy Code, and can be the basis for finding "good faith" under 11 U.S.C. § 1129 (a)(3).

Other jurisdictions considering the issue have had no difficulty concluding that this is contrary to generally accepted Bankruptcy policy and law. "To the extent that an estate is solvent, leading to a surplus distribution to the debtor, such concerns are abated." *In re Kalian*, 178 B.R. 308, 315 n.16 (Bankr. D. RI 1995). Where no other creditors would be affected by the payment of default interest, to deny the default rate "...would merely provide an undeserved windfall to the debtor." *In re Courtland Estates Corp.*, 144 B.R. 5, 9 (Bankr. D. Mass. 1992).

Indeed, this Court has also held that when the debtor is solvent, the equities dictate that the contractual rate of interest be paid to the creditor rather than retained by the solvent debtor. *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 164 (1946); *Ruskin v. Griffiths*, 269 F.2d 827, 832 (2d Cir. 1959), *cert. denied*, 361 U.S. 947 (1960).

Vanston was a Chapter X case involving a dispute between a debtor and bondholders whose claims were secured by a first mortgage on property of the estate. The indenture documents required the debtor to pay interest on past due interest that accrued on the notes. This Court held that while the indenture appropriately required the debtor to pay this interest, it was really a form of a penalty. Since the debtor was insolvent, it would have been inequitable to have required the other creditors to suffer the consequences of such a penalty, and therefore disallowed the payment of interest on interest. *Vanston*, 329 U.S. at 166.

The Court in *Vanston*, however, recognized that different circumstances would mandate that default interest be paid to the creditor. "But where an estate was ample to pay all creditors and to pay interest even after the petition was filed, equitable considerations . . . [were] invoked to permit payment of this additional interest to the secured creditor rather than to the debtor." *Vanston*, 329 U.S. at 164-65 (citations omitted).

This Court reaffirmed that principal again in *United States v. Ron Pair Enters.*, 489 U.S. 235, 248 (1989) (solvent debtor should pay entire interest obligation). Recent cases have even held that the balance of equities must be analyzed for default interest regardless of whether or not a debtor exercised the right to "cure." *E.g. In re Vest Assocs.*, 217

B.R. 696, 702 (S.D. N.Y. 1998) (noting that "there is an absence of uniformity in the treatment of default interest provisions").

The import of these decisions is clear. The mere fact that a particular course of action is possible in a bankruptcy case does not mean that such action is consistent with the objectives and purposes of bankruptcy law in all cases. When a solvent debtor uses Chapter 11 for no reason other than to take advantage of the provisions of § 1124(2), equity demands that the totality of circumstances related to the debtor's conduct be scrutinized under the good faith standard of § 1129(a)(3). This is not, as the Ninth Circuit concluded, the application of a *per se* rule. Quite the contrary, it involves an *ad hoc* evaluation of the each Chapter 11 plan, precisely as the Bankruptcy Code requires.

This and other courts have consistently prohibited employing bankruptcy tools where no bankruptcy objective is being achieved. In *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.* (*In re Timbers of Inwood Forest* Assocs., Ltd.), 808 F.2d 363, 373 (5th Cir. 1987) (en banc), *aff'd*, 484 U.S. 365 (1988), the Fifth Circuit discussed the problem of abusing the provisions of the Bankruptcy Code where financial restructuring is not taking place.

> "A principal goal of the reorganization provisions of the Bankruptcy Code is to benefit the creditors of the Chapter 11 debtor by preserving going-concern values and thereby enhancing the amounts recovered by all creditors. The secured creditor benefits from a successful reorganization because its secured claim is valued on a going-concern basis in connection with a plan of reorganization, and

> the secured creditor is not compelled to liquidate its collateral at forced-sale prices. However, when there is no reasonable likelihood that the statutory objective of reorganization can be realized or when the debtor unreasonably delays, then the automatic stay and other statutory provisions designed to accomplish the reorganization objective become destructive of the legitimate rights and interests of creditors, the intended beneficiaries."

Id. at 373.

The Third Circuit case of *In re SGL Carbon Corporation*, 200 F.3d 154 (3rd Cir. 1999), held that Chapter 11 was an inappropriate vehicle for a financially healthy debtor to leverage litigants. The court noted that in cases where other courts had permitted Chapter 11 filings by companies facing pending litigation, the debtors were also experiencing serious financial or operational difficulties.

In re Maxim Industries, Inc., 22 B.R. 611, 613 (Bankr. D. Mass. 1982), the bankruptcy court was faced with a plan of reorganization which permitted the debtor's insiders to avoid almost $1 million of tax and other personal liability while providing a six percent dividend to creditors. In refusing to confirm such a plan, the court stated that:

> "To allow this plan would be to subvert Congressional intent in a manner that even the best of the perfumer's art could not disguise. This plan does not comply with 11 U.S.C. § 1129(a)(3) in that it was not proposed in good faith. The purpose of a Chapter 11

> reorganization proceeding is to enable a business to rehabilitate itself and become a profitable going concern.... Chapter 11 was not designed to permit the use of shell corporations for the personal benefit of the officers of the corporation." [*citations omitted*].

None of these cases adopted a "*per se*" rule, and neither should this Court. Rather, each court inquired whether the Plan as proposed achieved, as it must, "a result consistent with objectives of the Bankruptcy Code." *In re Corey*, 892 F.2d 829, 835 (9th Cir. 1989). Rather than make this inquiry, the Ninth Circuit, facing this issue for the first time, not only erred but also created a decisional conflict that must be resolved.

III. The Question Presented is Important To the Reorganization Process

This case is not about the financial restructuring of a troubled business. The Debtors did not require, and did not receive, a fresh start. Rather, this is a case in which Debtors used the Bankruptcy Code to avoid paying one obligation that they had voluntarily undertaken in 1992, while leaving all of their other obligations essentially untouched. The Debtors agreed in 1992 to pay default interest. This was a risk the Debtors undertook, and "[t]he purpose of chapter 11, whether under the old Act or under the Bankruptcy Code, has never been designed to absorb the consequences of risk-taking. " *In re: Financial Center Assoc.*, 140 B.R. 829, 838 (Bankr. E.D.N.Y. 1992) (denying a debtor a reduction of the contracted-for interest rate to be used in calculating a pre-payment penalty).

The Ninth Circuit decision is yet another step in the direction of encouraging bankruptcy abuse. This decision paves the way for continued egregious abuse of the bankruptcy system by wealthy entities, and therefore implicates a matter of public concern.

CONCLUSION

A reorganization plan whose sole and primary purpose is the avoidance of approximately $1 million of Petitioner's claim, accomplished by Debtors who clearly have the resources to pay the claim without affecting their lifestyles or standard of living in any measurable way, cannot possibly be consistent with any meaningful good faith standard.

This conclusion should be even more obvious when the only beneficiaries of this sham reorganization were the debtors themselves. Indeed, for the past two years Congress has been considering significant amendments to the Bankruptcy Code, fueled in large part by the perception that bankruptcy laws make it too easy for debtors of means to avoid paying their debts. No Bankruptcy policy was furthered by this plan; instead, bankruptcy abuse flourished. If the Bankruptcy Court's confirmation order is permitted to stand in this case, it would serve as an unfortunate paradigm for that very perception.

For the reasons set forth above, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-57210

September 11, 2002, Argued and Submitted,
Pasadena, California
[Filed December 30, 2002]

In re: SYLMAR PLAZA, L.P.;	)
In re: STEVEN HENRY HORNWOOD;	)
In re: RITA HOLTZMAN HORNWOOD;	)
In re: ROBERTA MAY HORNWOOD,	)
Debtors.	)
	)
PLATINUM CAPITAL, INC.,	)
Appellant,	)
	)
v.	)
	)
SYLMAR PLAZA, L.P.; RITA HOLTZMAN HORNWOOD; STEVEN HENRY HORNWOOD; ROBERTA MAY HORNWOOD,	)
Appellees.	)
	)

Appeal from the Ninth Circuit Bankruptcy Appellate Panel
Klein, Montali, and Brandt, Bankruptcy Judges, Presiding
BAP No. CC-00-01277-KMoB

Before: David R. Thompson and Johnnie B. Rawlinson, Circuit Judges, and William W Schwarzer*, Senior District Judge.

COUNSEL: Edward M. Wolkowitz, Robinson, Diamant & Wolkowitz, Los Angeles, California, for the appellant.

Bennett L. Spiegel, Wynn Spiegel Itkin, Los Angeles, California, for the appellees.

OPINION BY: William W. Schwarzer

OPINION

SCHWARZER, Senior District Judge:

Platinum Capital, Inc. ("Platinum") appeals a decision of the Bankruptcy Appellate Panel ("BAP") affirming the bankruptcy court's order that confirmed the chapter 11 plan of reorganization of appellees Sylmar Plaza, L.P. and Rita H. and Roberta M. Hornwood ("the Hornwoods").[1] We must decide whether the bankruptcy court erred in finding a plan of reorganization was proposed in good faith under (a)(3) where its sole purpose was to enable the debtors to "cure and reinstate" an obligation, thereby avoiding a contractual

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* The Honorable William W. Schwarzer, Senior United States District Judge for the Northern District of California, sitting by designation.

[1] Sanford Hornwood died in 1996; Steven H. Hornwood died in 2000.

liability for default interest. We have jurisdiction under (d) and affirm.

FACTUAL BACKGROUND

The Hornwoods have a diverse real estate portfolio worth more than $ 55 million in which they have a net equity exceeding $ 15 million. Their assets included Sylmar Plaza, a shopping center, which is the focus of the litigation between the Hornwoods and Platinum. The dispute arises over a secured loan of $ 8,073,237 made to the Hornwoods in 1992 by Platinum's predecessor, Tokai Bank of California. In 1995, Tokai consented to the transfer of Sylmar to revocable family trusts, ostensibly created for estate planning purposes. The "Loan Assumption and Modification Agreement" attendant to that consent made three material changes in the loan agreement between the Hornwoods and Tokai: it changed the original variable interest rate to a fixed rate of 8.87% and a default interest rate of 13.87%; it extended the maturity date to April 3, 2000; and it forbade prepayment.

Sylmar apparently encountered cash flow problems beginning in 1995. In October 1997, the Hornwoods made their last payment to Tokai on the Sylmar loan, allowed taxes to become delinquent, and transferred Sylmar (without Tokai's required consent) to a new limited partnership, Sylmar Plaza, L.P. Simultaneously, they transferred the balance of their real estate portfolio to four other newly-created limited partnerships.

In June 1998, Tokai filed a judicial foreclosure action in state court against the Hornwoods, their two family trusts, and Sylmar Plaza, L.P. Tokai then sold its note to Platinum,

which continued to prosecute the judicial foreclosure action through trial.

Sylmar Plaza, L.P. filed this chapter 11 case the day after the state court issued its Statement of Intended Decision in favor of Platinum on all issues in the judicial foreclosure action. Platinum promptly moved for relief from the automatic bankruptcy stay, in response to which the Hornwoods filed individual chapter 11 cases.

The bankruptcy court permitted Sylmar Plaza to be sold for approximately $ 7 million free and clear of Platinum's lien, notwithstanding Platinum's claim that its lien exceeded $ 10 million. Because Platinum did not appeal the sale order, its claim was bifurcated into a secured claim measured by the net proceeds of the sale of Sylmar Plaza (plus funds in the hands of the receiver appointed by the state court) and an unsecured claim for the balance.

The confirmed plan of reorganization provided for payment of both Platinum's secured claim and its unsecured claim in full on the effective date of the plan. The procedural significance of this treatment was that Platinum's claims would not be "impaired" under the plan and it would, therefore, not be entitled to reject the plan or receive "cram down" protections, including protection against "unfair discrimination" under 11 U.S.C. § 1129(b).[2] The financial

---

[2] 11 U.S.C. § 1129(b)(1) provides in relevant part that the court "shall confirm the plan . . . if the plan does not discriminate unfairly . . . with respect to each class of claims . . . that is impaired . . . ."

11 U.S.C. § 1126(f) provides in relevant part that "a class that is

significance was to effect a "cure" of the default so that all interest, including post-petition interest, would be calculated at the 8.87% non-default rate, rather than the 13.87% default rate.[3] The difference in accrued interest calculated between the two rates amounts to approximately $ 1 million. All other unsecured claims were to be paid 10% interest retroactive to the filing date of the bankruptcy case.

Platinum objected to confirmation, contending that the plan had not been "proposed in good faith" as required by (a)(3). It made two arguments. First, it contended that examination of the various classes of claims revealed that the entire plan was conceived as a sham that had no material economic impact other than to deprive Platinum of the $ 1 million in default interest. Second, it argued that paying all other unsecured classes 10% post-petition interest while it would only receive 8.87% post-petition interest was so unfairly discriminatory as to cast doubt on the plan's "good faith." The bankruptcy court overruled Platinum's objections, stating:

> Well, I am going to find that I believe that all the requirements to have the plan confirmed have been satisfied under § 1129, including but not limited to § 1129(a)(3). I do believe that the plan has been proposed in good faith,

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not impaired under a plan . . . [is] conclusively presumed to have accepted the plan."

[3] 11 U.S.C. § 1123(a) provides in relevant part that "a plan shall--(5) provide adequate means for the plan's implementation, such as --(G) curing or waiving of any default."

> given the--all the facts in the record and really the history of the case as well.

On appeal to the BAP, Platinum did not challenge the bankruptcy court's factual findings but contended that the debtors could not in good faith design a plan expressly to exploit § 1124(2) exclusively to their advantage. The BAP rejected the proposed *per se* rule, holding that good faith is determined by consideration of the totality of the circumstances on a case-by-case basis. Accepting that the debtors' main purpose was to vitiate Platinum's right to default interest, the BAP held that the bankruptcy court did not clearly err in finding that the plan met § 1129(a)(3)'s good faith requirement.

DISCUSSION

I. THE APPEAL IS NOT MOOT

The Hornwoods contend that Platinum's appeal is moot because it failed to seek or obtain a stay pending appeal, and the plan has been substantially consummated. Their reliance on *In re Roberts Farms, Inc.* is misplaced. Even if the plan has been substantially consummated, because Platinum's claim is only for monetary damages against solvent debtors, this is not a case in which it would be impossible to fashion effective relief. Nor has there been such a comprehensive change in circumstances as to render it inequitable for the court to consider the merits of the appeal. *Id* at 798; *see Baker & Drake v. Public Serv. Comm'n* (*In re Baker and Drake, Inc.*), 35 F.3d 1348, 1351 (9th Cir. 1994).

The Hornwoods' further argument that the appeal is barred by *res judicata* because the bankruptcy court denied Platinum's motion to dismiss is without merit. There can be no bar in the absence of a final judgment.

II. THE BAP CORRECTLY REJECTED A PER SE RULE UNDER § 1129(a)(3)

Platinum does not attack the bankruptcy court's § 1129(a)(3) finding of good faith based on the totality of the circumstances.[4] Instead, it contends that lack of good faith was established as a matter of law because, notwithstanding its status as an unimpaired creditor under § 1124(2), the plan, as Platinum puts it, was crafted solely to permit the debtors to take advantage of the Bankruptcy Code to profit personally at the expense of a creditor.[5]

Section 1129(a)(3) does not define good faith. *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1994). A plan is proposed in good faith where it achieves a result consistent with the objectives and purposes of the Code. *Ryan*

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[4] 11 U.S.C. § 1129(a) provides in relevant part:

> "The court shall confirm a plan only if all of the following requirements are met:
>
> . . .
>
> (3) The plan has been proposed in good faith. . . ."

None of the other requirements are at issue.

[5] 11 U.S.C. § 1124(2) provides in relevant part that a claim is impaired under a plan unless the plan "cures any such default that occurred before or after the commencement of the case. . . ."

v. Loui (*In re Corey*), 892 F.2d 829, 835 (9th Cir. 1989); *see also*, *Madison Hotel*, 749 F.2d at 425 ("[F]or purposes of determining good faith under section 1129(a)(3) . . . the important point of inquiry is the plan itself and whether such plan will fairly achieve a result consistent with the objectives and purposes of the Bankruptcy Code."). The requisite good faith determination is based on the totality of the circumstances. *Stolrow v. Stolrow's, Inc.* (*In re Stolrow's, Inc.*), 84 B.R. 167, 172 (9th Cir. BAP 1988).

Platinum contends that a plan lacks good faith when it does not serve the purposes of the Bankruptcy Code. Here, it argues, the plan leaves the Hornwoods solvent while permitting them to avoid paying post-petition interest at the default interest rate. However, insolvency is not a prerequisite to a finding of good faith under § 1129(a). *See id* at 171. Moreover, that a creditor's contractual rights are adversely affected does not by itself warrant a bad faith finding. "In enacting the Bankruptcy Code, Congress made a determination that an eligible debtor should have the opportunity to avail itself of a number of Code provisions which adversely alter creditors' contractual and nonbankruptcy rights." *In re PPI Enter., Inc.*, 228 B.R. 339, 344-45 (Bankr. D. Del. 1998) (citation omitted). "[T]he fact that a debtor proposes a plan in which it avails itself of an applicable Code provision does not constitute evidence of bad faith." *Id.* at 347 (citation omitted) (stating that it is not bad faith to take advantage of a particular provision of the Code for the purpose of capping the amount of a creditor's claim).

Platinum cites a number of cases in an effort to support its proposed per se rule. *In re Chinichian*, 784 F.2d 1440 (9th Cir. 1986); *In re SGL Carbon Corp.*, 200 F.3d 154

(3d Cir. 1999); *In re Walker*, 165 B.R. 994 (E.D. Va. 1994); *In re Kemp*, 134 B.R. 413 (Bankr. E.D. Cal. 1991); *In re Van Owen Car Wash, Inc.*, 82 B.R. 671 (Bankr. C.D. Cal. 1988); *In re Maxim Indus., Inc.*, 22 B.R. 611 (Bankr. D. Mass. 1982). None of those cases adopts or approves a per se rule. Moreover, they are distinguishable because none involved an objection to a plan by an unimpaired creditor.

Our decision in *Great W. Bank & Trust v. Entz-White Lumber and Supply, Inc.* (*In re Entz-White Lumber and Supply, Inc.*, 850 F.2d 1338 (9th Cir. 1988), lays to rest Platinum's argument that a plan intended to nullify the consequences of a default (thereby avoiding the higher post-default interest rate) does not meet the purposes of the Bankruptcy Code. As the court put it, "It is clear that the power to cure under the Bankruptcy Code authorizes a plan to nullify all consequences of default, *including avoidance of default penalties such as higher interest*." *Id.* at 1342 (emphasis added). Given the specific power to cure default, it makes no sense to treat a plan invoking that power as lacking good faith. *See also*, *CityBank v. Udhus* (*In re Udhus*), 218 B.R. 513, 516 (9th Cir. BAP 1998).

Platinum would have us abandon our long settled interpretation of the good faith requirement, to wit, that "bankruptcy courts should determine a debtor's good faith on a case-by-case basis, taking into account the particular features of each . . . plan." *Goeb v. Heid* (*In re Goeb*), 675 F.2d 1386, 1390 (9th Cir. 1982); *see also*, *Smyrnos v. Padilla* (*In re Padilla*), 213 B.R. 349, 352 n.2 (B.A.P. 9th Cir. 1997) (stating that "the law in the Ninth Circuit is . . . that the determination of good faith must be based on the totality of the circumstances . . . ."). As a matter of policy, moreover,

Platinum's proposed per se rule would inject unnecessary and undesirable rigidity into the good faith inquiry. *See* 7 Collier on Bankruptcy, § 1129-34 (Matthew Bender & Co., 15th ed. revised 2002) ("There is considerable danger in attempting to bring any more definition to the requirement [beyond a totality of the circumstances analysis]. Inflexible rules rarely are the hallmark of good faith.").

Platinum tacks on a claim of error based on the disparity of interest rates paid to other creditors. While other unsecured creditors were entitled to 10%, Platinum received only its contractual rate of 8.87%. However, as an unimpaired creditor, Platinum has no standing to complain of discrimination because under § 1126(f), it is conclusively presumed to have accepted the plan. (b)(2); 1129(b)(1). *See also Great W. Bank & Trust*, 850 F.2d at 1342 (explaining that where the debtor pays the arrearage on a naturally matured debt and cures any default, a chapter 11 debtor is entitled to avoid all consequences of the default including default interest).

For the reasons stated, the decision of the BAP is affirmed.

AFFIRMED.

APPENDIX B

UNITED STATES BANKRUPTCY
APPELLATE PANEL
FOR THE NINTH CIRCUIT

BAP No. CC-00-1277-KMoB
Bk. No. LA 99-33188 AA
Jointly Administered with:
Bk. No. LA 99-37289 AA
Bk. No. LA 99-37658 AA

Argued and Submitted on November 15, 2000
at Los Angeles, California
[Filed December 12, 2000]

In re:	)
SYLMAR PLAZA, L.P.; RITA	)
HOLTZMAN HORNWOOD; STEVEN	)
HENRY HORNWOOD and ROBERTA	)
MAY HORNWOOD,	)
Debtors.	)
	)
PLATINUM CAPITAL, INC.,	)
Appellant,	)
	)
SYLMAR PLAZA, L.P., RITA	)
HOLTZMAN HORNWOOD, STEVEN	)
HENRY HORNWOOD, and ROBERTA	)
MAY HORNWOOD,	)
Appellees.	)
	)

Before: Klein, Montali and Brandt, Bankruptcy Judges. Honorable Alan Ahart, Bankruptcy Judge, Presiding

Appeal from the United States Bankruptcy Court
for the Central District of California

MEMORANDUM[1]

Appellant appeals the order confirming debtors' chapter 11 plan of reorganization. We are not persuaded that the bankruptcy court clearly erred when it concluded that the plan was proposed in good faith notwithstanding that a primary purpose of the plan was to vitiate appellant's contractual penalty interest clause and, further, to discriminate against appellant in the treatment of an unsecured claim. Accordingly, we AFFIRM.

FACTS

Rita Hornwood, Sanford Hornwood, Roberta Hornwood, and Steven Hornwood (collectively "Hornwoods") have a diverse real estate portfolio worth more than $55 million in which they have net equity exceeding $15 million.

Among the Hornwood assets was the shopping center known as Sylmar Plaza that is the bone of contention between the Hornwoods and appellant Platinum Capital, Inc. ("Platinum").

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[1] This disposition is not appropriate for publication and may not be cited except when relevant under the doctrines of law of the case, res judicata, or collateral estoppel. *See* 9th Cir. BAP Rule 8013-1.

The dispute arises from a $8,073,237 secured loan made to the Hornwoods in 1992 by Platinum's predecessor in interest, Tokai Bank of California ("Tokai").

In 1995 Tokai consented to the transfer of Sylmar Plaza to revocable family trusts, ostensibly created for estate planning purposes. The "Loan Assumption and Modification Agreement" attendant to that consent made three material changes to the agreement between the Hornwoods and Tokai. First, it changed the original variable interest rate to a fixed rate of 8.87 percent and a default interest rate of 13.87 percent. Second, it extended the maturity date to April 3, 2000. Finally, it forbade prepayment.

Sylmar Plaza apparently began to encounter cash flow problems, beginning in 1995.

In October 1997, the Hornwoods made their last payment to Tokai on the Sylmar Plaza loan, allowed taxes to become delinquent, and transferred (without Tokai's required consent) Sylmar Plaza to a new limited partnership, Sylmar Plaza, L.P., by quitclaim deed. Simultaneously, they transferred the balance of their real estate portfolio to four other newly-created limited partnerships.

In June 1998, Tokai filed a judicial foreclosure action in state court against the Hornwoods, their two family trusts, and Sylmar Plaza, L.P. Tokai sold its note to Platinum, which continued to prosecute the judicial foreclosure action through trial.

Sylmar Plaza, L.P., filed its chapter 11 case the day after the state court issued its Statement of Intended Decision

ruling in favor of Platinum on all issues in the judicial foreclosure action.

Platinum promptly moved for relief from the bankruptcy automatic stay, in response to which the surviving Hornwoods[2] filed individual chapter 11 cases.

The bankruptcy court permitted Sylmar Plaza to be sold for about $7 million free and clear of Platinum's lien notwithstanding that Platinum claimed that its lien exceeded $10 million. The net result (since Platinum did not appeal the sale order) was that Platinum's claim was bifurcated into a secured claim measured by the net proceeds of the sale of Sylmar Plaza (plus funds in the hands of the receiver appointed by the state court) and an unsecured claim for the balance.

The confirmed joint plan of reorganization provided for paying Platinum's secured (Class 19) and unsecured (Class 20) claims in full on the effective date of the plan. The procedural significance of this treatment was that Platinum would be "not impaired" so that it would not be entitled to accept or reject the plan and not be provided the "cram down" protections (including protection against "unfair discrimination") of 11 U.S.C. § 1129(b). The financial purpose of this treatment was to effect a "cure" of the default so that all interest (including post-petition interest) would be at the 8.87 percent non-default rate, rather than the 13.87 percent default rate. The difference in accrued interest calculated at the two rates is about $1 million.

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[2] Sanford Hornwood died in 1996.

All other unsecured claims were to be paid 10 percent interest retroactive to the date of the filing of the bankruptcy case.

Platinum objected to confirmation, contending that the plan had not been proposed in "good faith" as required by 11 U.S.C. § 1129(a) (3). It urged two main points in support of its challenge to the "good faith" of the plan. First, it contended that a close examination of the various classes revealed that the entire plan was conceived as a sham that had no material economic impact other than to deprive Platinum of about $1 million in default interest. Second, Platinum contended that paying all other unsecured classes 10 percent post-petition interest while it was only receiving 8.87 percent post-petition interest was so unfairly discriminatory as to cast doubt on the "good faith" question.

The bankruptcy court concluded that the plan was proposed in "good faith" and confirmed it. This appeal ensued.

ISSUE

> Did the bankruptcy court err when it confirmed the plan of reorganization over the objection that the plan proponent did not satisfy 11 U.S.C. § 1129(a) (3)?

STANDARD OF REVIEW

The bankruptcy court's determination of whether a chapter 11 plan is proposed in good faith is reviewed for clear error. *Connecticut Gen. Life Ins. Co. v. Hotel Assocs. of*

Tucson (In re Hotel Assocs. of Tucson), 165 B.R. 470, 473 (9th Cir. BAP 1994). A finding of fact is clearly erroneous when review of the evidence leaves the reviewing court with a definite and firm conviction that a mistake has been committed. *Pacific First Bank v. Boulders on the River, Inc. (In re Boulders on the River, Inc.)*, 164 B.R. 99, 103 (9th Cir. BAP 1994). Questions of law and issues of statutory interpretation are reviewed de novo. *Acequia, Inc. v. Clinton (In re Acequia, Inc.)*, 787 F.2d 1352, 1357 (9th Cir. 1986).

DISCUSSION

The plan divided appellant's claim into two classes. One class was comprised of the part of appellant's claim that was secured by the property. The amount of this secured claim was determined by the value of the property upon sale. The other class consisted of the unsecured sum of the allowed portion of appellant's claim in excess of the value of the property and appellant's other allowed unsecured claims. The plan purported to render all of appellant's claims unimpaired.

> A claim is unimpaired under a plan if the plan -
>
> ...(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default -
>
> > (A) cures any such default that occurred before or after the commencement of the case under this title,...

> (B) reinstates the maturity of such claim or interest as such maturity existed before such default;
>
> (C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and
>
> (D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.

11 U.S.C. § 1124.[3]

The parties agree that because debtors defaulted on the obligation, default interest had accrued under the contract. The plan, however, provided for curing the default on the obligation and otherwise satisfied the requirements of § 1124(2). By paying the arrearage on a naturally matured debt

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[3] If the relevant standard for measuring "impairment" were to be based upon a comparison of the creditor's rights as of the commencement of the caseand the rights under the plan, then appellant probably would be impaired because the property was sold during this case on motion, free and clear of appellant's lien (under circumstances in which there was no appeal). The language of § 1124, however, focuses upon whether the impairment is "under a plan." The plan in this instance does not alter the appellant's rights as they existed immediately before confirmation.

and curing any default, a chapter 11 debtor is entitled to avoid all consequences of the default including default interest. *Great W. Bank & Trust v. Entz-White Lumber & Supply*, 850 F.2d 1338, 1342 (9th Cir. 1988). As a result, appellant's claim was unimpaired despite the fact that the plan did not provide for default interest on appellant's claim.[4]

Appellant argues that notwithstanding its status as unimpaired under § 1124(2), the plan nevertheless failed to meet the good faith requirement imposed under the 11 U.S.C. § 1129(a) (3). Appellant contends that the plan could not have been proposed in good faith because it was designed solely to eliminate appellant's claim for default interest in the context where the debtors retained ample assets to pay the default interest. Appellant further asserts that the absence of good faith is evidenced by the fact that the plan discriminated against appellant by paying post-petition interest on its unsecured claim at the 8.87 percent contract rate rather than the 10 percent interest rate paid on all other unsecured claims. Moreover, it contends that the plan only benefits the debtors.

At the confirmation hearing, the bankruptcy court announced that all of the requirements of § 1129, including good faith, had been met. The court then directed the debtors to prepare an appropriate order and findings. The court did not render specific, separate findings of fact and conclusions of law.

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[4] The parties agree that 11 U.S.C. § 1123(d), enacted effective October 22, 1994, does not apply to the debtors' obligation to pay default rate interest in this case because the agreement in question antedated the effective date of that section.

An objection to plan confirmation is a contested matter as to which the bankruptcy court must find the facts specially and state separately its conclusions of law. Fed. R. Civ. P. 52 (as made applicable by Fed. R. Bankr. P. 7052 & 9014); *Moen v. Hull (In re Hull)*, 251 B.R. 726, 731 (9th Cir. BAP 2000); *Official Comm. of Unsec. Creditors v. Michelson (In re Michelson)*, 141 B.R. 715, 719 (Bankr. E.D. Cal. 1992). Reversal based on failure to comply with Rule 52, however, is not required if the failure to comply does not compromise the ability of the reviewing court to achieve a full understanding of the issue presented. *Magna Weld Sales Co. v. Magna Alloys & Research Pty. Ltd.*, 545 F.2d 668, 671 (9th Cir. 1976). The record here is sufficient for review.

According to the order confirming the plan, the court considered the evidence adduced, the facts and the circumstances including "the Debtors' efforts to market and marshal their assets in order to pay all creditors, in full, with interest, and the full cure, reinstatement and immediate payment of Platinum's entire secured claim," and found that "the plan ha[d] been proposed in good faith to restructure and satisfy all of Debtors' creditors and obligations."

Appellant does not challenge the court's factual findings. Instead, appellant invites the panel to determine, as a matter of law, whether the debtors could in good faith design a plan expressly to exploit § 1124(2) exclusively to their advantage. The debtors respond that they have an unfettered right to utilize the provisions of the Code and that such use of the Code's provisions is not per se bad faith. We agree.

Nor are we persuaded that the payment of differential interest rates to unsecured creditors, while insulting, warrants an inference of bad faith. While appellant refers to "unfair discrimination" with this treatment, we cannot apply the unfair discrimination analysis of § 1129(b) because appellant is not impaired by the plan. We further note that the 8.87 percent interest rate would pass muster in the § 1129(a) (2) hypothetical liquidation analysis that, again, only applies to impaired classes, because it exceeds the "legal rate" of interest required by 11 U.S.C. § 726(a) (5) in a chapter 7 liquidation before there can be a residual distribution to a chapter 7 debtor under 11 U.S.C. § 726(a) (6) .

A plan must "achieve a result consistent with the objectives and purposes of the Code" in order to be proposed in good faith under § 1129(a)(3). *Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989) ; *Stolrow v. Stolrow's Inc. (In re Stolrow's Inc.)*, 84 B.R. 167, 172 (9th Cir. BAP 1988). In addition, the debtor must deal with creditors with fundamental fairness. *Stolrow's*, 84 B.R. at 172. Good faith is determined by consideration of the totality of the circumstances. *Id.*

The language that requires the court to determine whether a chapter 11 plan is proposed in good faith is identical to the language that requires the court to determine whether a chapter 13 plan has been filed in good faith. 11 U.S.C. §§ 1129(a) (3), 1325(a) (3). Therefore, the analysis of good faith under § 1129(a) (3) would parallel the analysis of good faith under § 1325(a) (3) in a factually similar chapter 13 case. *See Beguelin v. Volcano Vision, Inc. (In re Bequelin)*, 220 B.R. 94, 99 (9th Cir. BAP 1998) (stating that where Code sections contain virtually identical language,

effect of provisions is same). Hence, chapter 13 cases dealing with the § 1325(a) (3) good faith requirement can be instructive in determining good faith in chapter 11 cases.

Chapter 13 cases direct the court to look beyond bare statutory payment requirements in order to examine good faith. Cursory evaluation of the amount to be paid under the plan is not a substitute for a review of the totality of the circumstances. *Fidelity & Cas. Co. v. Warren (In re Warren)*, 89 B.R. 87, 92 (9th Cir. BAP 1988).

In addition, good faith should be determined on a case by case basis, taking into account the particular features of the plan. *Goeb v. Heid (In re Goeb)*, 675 F.2d 1386, 1390 (9th Cir. 1982). For instance, the fact that a debtor files a chapter 13 petition to take advantage of 11 U.S.C. § 1328(a), even shortly after a creditor receives a judgment against the debtor that is nondischargeable in chapter 7, is not alone dispositive of good faith. *Smyrnos v. Padilla (In re Padilla)*, 213 B.R. 349, 355 (9th Cir. BAP 1997). The court must carefully consider the totality of circumstances. Id.

Courts tend to avoid defining good faith with inflexible rules. 7 COLLIER ON BANKRUPTCY, § 1129-34 (Matthew Bender & Co. 15th ed. 1999). This panel declines appellant's invitation to create a rigid threshold that would require a finding of no good faith when a debtor proposes a plan solely to take advantage of § 1124(2) and solely to benefit the debtor. Instead, we will adhere to the traditional formulation of good faith based on the totality of the circumstances.

An investigation of the totality of the circumstances is basically a factual inquiry. *Id.* at § 1129-37. We accept at face

value that the debtors' main purpose in this plan was to vitiate the appellant's right to default interest. Nevertheless we are not persuaded that the court clearly erred in finding that debtors proposed their plan in good faith.

CONCLUSION

We cannot say that the court erred when, under the totality of the circumstances, it determined that the plan had been proposed in good faith under § 1129(a) (3). AFFIRMED.

U.S. Bankruptcy Appellate Panel
of the Ninth Circuit
125 South Grand Avenue, Pasadena, California 91105
Appeals from Central California (626) 229-7220
Appeals from all other Districts (626) 229-7225

NOTICE OF ENTRY OF JUDGMENT

BAP No. CC-00-1277-KMoB

RE: SYLMAR PLAZA, L.P., RITA HOLTZMAN HORNWOOD, STEVEN HENRY HORNWOOD, ROBERT MAY HORNWOOD

A separate Judgment was entered in this case on _____ 12/12/00 _____.

BILL OF COSTS:

Bankruptcy Rule 8014 provides that costs on appeal shall be taxed by the Clerk of the Bankruptcy Court. Cost bills should be filed with the Clerk of the Bankruptcy Court from which the appeal was taken.
9th Cir. BAP Rule 8014-1

ISSUANCE OF THE MANDATE:

The mandate, a certified copy of the judgment sent to the Clerk of the Bankruptcy Court from which the appeal was taken, will be issued 7 days after the expiration of the time for filing a petition for rehearing unless such a petition is filed or the time is shortened or enlarged by order. See Federal Rule of Appellate Procedure 41.

APPEAL TO COURT OF APPEALS:

An appeal to the Ninth Circuit Court of Appeals is initiated by filing a notice of appeal with the Clerk of this Panel. The Notice of Appeal should be accompanied by payment of the $105 filing fee and a copy of the order or decision on appeal. Checks may be made payable to the U.S. Court of Appeals for the Ninth Circuit. See Federal Rules of Appellate Procedure 6 and the corresponding Rules of the United States Court of Appeals for the Ninth Circuit for specific time requirements.

CERTIFICATE OF MAILING

The undersigned, deputy clerk of the U.S. Bankruptcy Appellate Panel of the Ninth Circuit, hereby certifies that a copy of the document on which this stamp appears was mailed this date to all parties in interest as designated by the Appellant in the Notice of Appeal.

By: Edwina Clay

Deputy Clerk: December 12, 2000

APPENDIX C

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Attorney for Sylmar Plaza, L.P.

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

Case No. LA 99-33188 AA
Jointly Administered with:
Case No. LA 99-37289 AA
Case No. LA 99-37658 AA
Chapter 11

[Filed April 19, 2000]

In re	)
	)
SYLMAR PLAZA, L.P.,	)
a California Limited Partnership,	)
Debtor.	)
	)
In re	)
	)
RITA HOLTZMAN HORNWOOD, aka	)
RITA HORNWOOD,	)
Debtor.	)
	)
In re	)
	)
STEVEN HENRY HORNWOOD, aka	)
STEVEN H. HORNWOOD, and	)
ROBERTA MAY HORNWOOD, aka	)
ROBERTA M. HOPEWOOD,	)
Joint Debtors.	)
	)

DATE: April 19, 2000
TIME: 9:30 a.m.
PLACE: Courtroom 1375
255 East Temple Street
Los Angeles, CA 90012

ORDER GRANTING MOTION FOR CONFIRMATION OF FIRST AMENDED JOINT PLAN OF REORGANIZATION (AS MODIFIED JANUARY 19, 2000) AND CONFIRMING PLAN

AT LOS ANGELES, CALIFORNIA, IN THIS DISTRICT:

After timely and proper notice thereof, on the 19th day of April, 2000, at the hour of 9:30 a.m., a hearing was held before the Honorable Alan M. Ahart, United States Bankruptcy Judge, in his Courtroom 1375 of the Edward R. Roybal Federal Building, located at 255 East Temple Street, Los Angeles, California 90012, to consider: (1) the First Amended Joint Plan Of Reorganization (As Modified January 19, 2000) For Steven And Roberta Hornwood, Rita Hornwood, And Sylmar Plaza, L.P. (the "Plan") proposed by Roberta Hornwood, Rita Hornwood and Sylmar Plaza, L.P. (collectively known as the "Debtors"); (2) the objections to the Plan filed by Platinum Capital, Inc. ("Platinum"), Lana Borsook, and Thomas McAndrews; (3) the Memorandum In Response To Objections To Confirmation Of First Amended Joint Plan Of Reorganization (As Modified January 19, 2000) For Steven And Roberta Hornwood, Rita Hornwood, And Sylmar Plaza, L.P.; (4) the Motion For Confirmation Of First Amended Joint Plan Of Reorganization (As Modified January 19, 2000) For Steven And Roberta Hornwood, Rita Hornwood, And Sylmar Plaza, L.P., And Conditional

Motion For Modification Of Plan Pursuant To 11 U.S.C. § 1127(a) (the "Motion"); (5) the responses to the Motion filed by Platinum and Lana Borsook; and (6) the Debtors' Reply Memorandum To Responses Of Platinum Capital, Inc. And Lana Borsook To Debtors' Motion For Confirmation Of First Amended Joint Plan Of Reorganization (As Modified January 19, 2000.

Rita Holtzman Hornwood appeared by Joseph A. Eisenberg P.C. of Jeffer, Mangels, Butler & Marmaro LLP. Roberta May Hornwood and the estate of Steven Henry Hornwood appeared by Richard L. Wynne of Wynne Spiegel Itkin, A Law Corporation. Sylmar Plaza, L.P. appeared by Daniel E. Mintz of the Law Offices of Daniel Mintz. All other appearances were as noted on the record.

The Court, having considered the Plan, the Motion, the various memoranda of points and authorities, notices, declarations, exhibits, and other pleadings submitted by the Debtors in support of the granting of the Motion and the confirmation of the Plan, the record in these three jointly administered chapter 11 bankruptcy cases, and the arguments and representations of counsel at the hearing on confirmation of the Plan, it appearing that confirmation of the Plan is in the best interests of the Debtors' bankruptcy estates and supported by sufficient evidence, and the Plan having been proposed in good faith

IT IS HEREBY ORDERED THAT:

1. The Motion is granted, in so far as it calls for the confirmation of the Plan without further modification.

2. The responses of Platinum and Lana Borsook to the Motion are hereby overruled.

3. The Plan is confirmed pursuant to 11 U.S.C. §§ 1129(a) and (b).

4. The objections of Platinum, Lana Borsook, and Thomas McAndrews to the Plan are hereby overruled.

5. The Court finds, based on the evidence before it, that the Plan and the Debtors, as relevant, have met the requirements of 11 U.S.C. §§ 1129(a) (1), (a) (2), (a) (3), (a) (4), (a) (5), (a) (6), (a) (7), (a) (9), (a) (10), (a) (11), (a) (12), and (a) (13), as such statutory requirements are applicable to the Plan and/or the Debtors.

6. The Court finds, based on the evidence adduced, and based on the specific facts and circumstances, including without limitation, the Debtors' efforts to market and marshal their assets in order to pay all creditors, in full, with interest, and the full cure, reinstatement and immediate payment of Platinum's entire secured claim, that the Plan has been proposed in good faith to restructure and satisfy all of Debtors' creditors and obligations.

7. The Court finds, based on the evidence before it, that the Plan meets the requirements of 11 U.S.C. § 1129(b) with regard to Lana Borsook, in that the Plan does not discriminate unfairly against her and is fair and equitable.

8. The Court holds, based on the payment on this date from the Debtors to Platinum (including Allen Alevy,

Alevy & Associates, and Amusement Industry, Inc.) in the amount of $2,511,728.23, and all prior payments made by the Debtors (or on account of the Debtors) to Platinum during the pendency of these bankruptcy cases, that all of the claims of Platinum (including Allen Alevy, Alevy & Associates, and Amusements Industry, Inc.) against the Debtors have been fully "cured" and "reinstated" pursuant to 11 U.S.C. § 1124 (2) , and that such payments fully satisfy said claims to extent allowed by applicable law.

9. The Plan is deemed modified, to the extent necessary, to conform the treatment therein of the allowed claims (if any) of Thomas McAndrews and the law firm of Marshack, Shulman, Hodges & Friedman LLP to the terms of the Court's Order to Show Cause heard on April 12, 2000.

10. The provisions of the Plan and this Order are binding on the Debtors, their estates, any and all creditors of the Debtors (or any of them), whether or not the claim of such creditor is impaired under the Plan and whether or not such creditor has accepted the Plan.

11. A copy of the Plan is attached hereto as Exhibit "1". Capitalized terms not defined in this Order have the meanings given them in the Plan.

12. This Order is not stayed under Fed. R. Bankr. P. 3020.

13. The Debtors, except for Sylmar Plaza, L.P. , are discharged as of the Effective Date from all debts that arose or could have been asserted against the Debtors (or any

of them) before the date of entry of this Order, and any debt of a kind specified in 11 U.S.C. §§ 502(g), (h) and (i), whether or not a proof of claim based on such a debt is filed or deemed filed under 11 U.S.C. § 501, such claim is allowed under 11 U.S.C. § 502, or the holder of such claim has accepted the Plan, except that the obligations of the Debtors under the Plan shall survive the discharge provided by this Order.

14. Any judgment at any time obtained in any other court, to the extent that such judgment is a determination of the liability of the Debtors (or any of them) with respect to any discharged debt, is void.

15. **Except as otherwise provided by the Court,** The commencement or continuation of any action, the employment of process, or any act to collect, recover, or offset from or against the Debtors (or any them), their estates, or the property of any of these entities, any claim, obligation, liability, or claim that has been discharged herein is hereby forever enjoined.

16. Except as otherwise specifically provided for in the Plan, on the Effective Date, the Debtors shall each be re-vested with all of the property in their respective estates, including all causes of action, legal and equitable, claims of every nature, including without limitation any and all legal or equitable claims or causes of action that the Debtors have or may allege, which property and causes of action shall be free and clear of all claims, liens and encumbrances. ~~Thereafter, except as provided for in the Plan, the Debtors shall own and manage such property without further jurisdiction, restriction,~~

~~or supervision of or by the Court, except to the extent necessary to implement or consummate the provisions of the Plan.~~

17. To the extent that the terms of the Plan are not superseded by the terms of this Order, the terms of the Plan remain in full effect. **The Debtors shall have 60 days from the effective date to file all objections to claims.**

18. Pursuant to Local Bankruptcy Rule 3020-1(b), ~~within 120 days of the entry of this order,~~ **on or before June 29, 2000,** the Debtors shall file a status report ("Report") explaining what progress has been made toward consummation of the confirmed plan of reorganization. The initial Report shall be served on the United States Trustee, the twenty largest unsecured creditors, and those parties who have requested special notice. Further Reports shall be filed every 120 days thereafter and served on the same entities, unless otherwise ordered by the Court. The Report shall include at least the following information:

(a) A schedule listing for each debt and each class of claims; the total amount required to be paid under the plan; the amount required to be paid as of the date of the Report; the amount actually paid as of the date of the Report; and the deficiency, if any, in require payments;

(b) A schedule of any and all post-confirmation tax liabilities that have accrued or come due, and a detailed explanation of payments thereon;

(c) The Debtors' projections as to their continuing ability to comply with the terms of the plan;

(d) An estimate of the date for plan consummation and application for final decree; and

(e) Any other pertinent information needed to explain the progress toward completion of the confirmed plan.

If any of the Debtors' cases are converted to one under chapter 7, the property of the reorganized debtor shall be re-vested in the chapter 7 estate, except that, with regard to the estates of Rita Hornwood and/or Roberta Hornwood, post-petition income from personal services and proceeds thereof, and post-confirmation gifts or inheritances pursuant to 11 U.S.C. §§ 541(a) (5) (A) or (a) (6) shall not automatically revest in the chapter 7 estate.

ALAN M. AHART APR 19, 2000
THE HONORABLE ALAN M. AHART
UNITED STATES BANKRUPTCY JUDGE

Submitted By:

JEFFER, MANGELS, BUTLER & MARMARO LLP

By: _____
Joseph A. Eisenberg, P.C.
Attorneys for Rita Hornwood

FIRST AMENDED JOINT DISCLOSURE STATEMENT AND PLAN OF REORGANIZATION (AS MODIFIED JANUARY 19, 2000) FOR STEVEN AND ROBERTA HORNWOOD, RITA HORNWOOD, AND SYLMAR PLAZA L.P.

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I. INTRODUCTION

On June 18, 1999, Sylmar Plaza, L.P. ("Sylmar") filed a voluntary petition under Chapter 11 of the Bankruptcy Code ("Code"). Rita Hornwood ("Rita") filed a chapter 11 petition on July 21, 1999, and Steven and Roberta Hornwood ("Steven and Roberta") filed a joint chapter 11 petition on July 23, 1999. Sylmar, Rita, and Steven and Roberta are collectively referred to herein as the "Debtors". The document you are reading is both the Plan of Reorganization ("Plan") and the Disclosure Statement. The Debtors have proposed the Plan to treat the claims of the Debtors' creditors and, if applicable, the interests of shareholders or partners, and to reorganize the Debtors, business affairs. A disclosure statement describes the assumptions that underlie the Plan and how the Plan will be executed. The Bankruptcy Court ("Court") has approved the form of this document as an adequate disclosure statement, containing enough information to enable parties affected by the Plan to make an informed judgment about the Plan. The Court has not yet confirmed the Plan, which means the terms of the Plan are not now binding on anyone.

The Debtors have reserved April 5, 2000 at 9:30 a.m. in Courtroom 1375 of the Roybal Federal Building, 225 E. Temple Street in Los Angeles, California for a hearing to determine whether the Court will confirm the Plan.

Any interested party desiring further information should contact:

Stuart J. Wald
Jeffer, Mangels, Butler & Marmaro LLP
2121 Avenue of the Stars, 10th Floor
Los Angeles, CA 90067
(310) 203-8080

II. GENERAL DISCLAIMER AND VOTING PROCEDURE

PLEASE READ THIS DOCUMENT, INCLUDING THE ATTACHED EXHIBITS, CAREFULLY. IT EXPLAINS WHO MAY OBJECT TO CONFIRMATION OF THE PLAN. IT EXPLAINS WHO IS ENTITLED TO VOTE TO ACCEPT OR REJECT THE PLAN. IT ALSO TELLS ALL CREDITORS AND ANY SHAREHOLDERS OR PARTNERS WHAT TREATMENT THEY CAN EXPECT TO RECEIVE UNDER THE PLAN, SHOULD THE PLAN BE CONFIRMED BY THE COURT.

THE SOURCES OF FINANCIAL DATA RELIED UPON IN FORMULATING THIS DOCUMENT ARE SET FORTH IN THE DECLARATIONS IN SECTION XX BELOW. ALL REPRESENTATIONS ARE TRUE TO THE DEBTORS' BEST KNOWLEDGE.

NO REPRESENTATIONS CONCERNING THE DEBTORS THAT ARE INCONSISTENT WITH ANYTHING CONTAINED HEREIN ARE AUTHORIZED EXCEPT TO THE EXTENT, IF AT ALL, THAT THE COURT ORDERS OTHERWISE.

After carefully reviewing this document and the attached exhibits, please vote on the enclosed ballot and return it in the enclosed envelope.

The Debtors have reserved a hearing date for a hearing to determine whether the Court will confirm the Plan, and have filed a motion for the Court to grant such confirmation (the "Motion"). Please refer to Section I above for the specific hearing date.

The Motion shall at least be served on all known creditors and partners or shareholders and on the Office of the United States Trustee. Any opposition to the Motion shall be filed and served on the Debtors and on the Office of the United States Trustee no later than fourteen (14) days prior to the hearing date. Failure to oppose the confirmation of the Plan may be deemed consent to the Plan's confirmation.

III. WHO MAY OBJECT TO CONFIRMATION OF THE PLAN

Any party in interest may object to confirmation of the Plan, but as explained below not everyone is entitled to vote to accept or reject the Plan. Objections must be received by the Debtors, addressed to:

Stuart Wald, Esq.
Jeffer, Mangels, Butler & Marmaro LLP
2121 Avenue of the Stars, 10th Floor
Los Angeles, CA 90067

by the close of business (5:00 p.m.) on February 25, 2000.

IV. WHO MAY VOTE TO ACCEPT OR REJECT THE PLAN

It requires both an allowed and impaired claim or interest in order to vote either to accept or reject the Plan. A claim is defined by the Code to include a right to payment from the Debtors or any one or more of them. An interest represents an ownership stake in Sylmar.

In order to vote a creditor or interest-holder must first have an allowed claim or interest. With the exceptions explained below, a claim is allowed if proof of the claim or interest is properly filed before any bar date and no party in interest has objected, or if the Court has entered an order allowing the claim or interest. Please refer to Section VI below for specific information regarding bar dates in this case.

Under certain circumstances a creditor may have an allowed claim even if a proof of claim was not filed and the bar date for filing a proof of claim has passed. A claim is deemed allowed if the claim is listed on the Debtors' schedules and is not scheduled as disputed, contingent, or unliquidated. Exhibit "1" contains a list of claims that were listed on the Debtors' schedules as undisputed, liquidated and non-contingent, excepting those claims for which a proof of claim has subsequently been filed. If you filed a proof of claim, you should be listed on the Court's official claims register for the specific bankruptcy case. Copies of the Court's official registers of claims for these three cases are included as part of Exhibit "1".

Similarly, an interest is deemed allowed if it is shown on the list of equity security holders filed by Sylmar with the Court and is not scheduled as disputed.

In order to vote, an allowed claim or interest must also be impaired by the Plan.

Impaired creditors include those whose legal, equitable, and contractual rights are altered by the Plan, even if the alteration is beneficial to the creditor. A contract provision that entitles a creditor to accelerated payment upon default does not, however, necessarily render the claimant impaired, even if the Debtors defaulted and the Plan does not provide the creditor with accelerated payment. The creditor is deemed unimpaired so long as the Plan cures the default, reinstates the maturity of such claim as it existed before default, and compensates for any damages incurred as a result of reasonable reliance upon the acceleration clause.

Impaired interest-holders include those whose legal, equitable, and contractual rights are altered by the Plan, even if the alteration is beneficial to the interest holder.

There are also some types of claims which the Code requires be treated a certain way. For that reason they are considered unimpaired and therefore holders of these claims cannot vote.

To summarize, there are two prerequisites to voting: a claim or interest must be allowed and impaired under the Plan.

If a creditor or interest-holder has an allowed and impaired claim or interest, then he or she may vote either to accept or reject the Plan (unimpaired claimants or interest-holders are deemed to have accepted the Plan). Impaired claims or interests are placed in classes and it is the class that must accept the Plan. Members of unimpaired classes do not vote, although as stated above, they may object to confirmation of the Plan. Even if all classes do not vote in favor of the Plan, the Plan may nonetheless be confirmed if the dissenting classes are treated in a manner prescribed by the Code. Please refer to Section VI below for information regarding impaired and unimpaired classes in this case.

Section IX sets forth which claims are in which class. Secured claims are placed in separate classes from unsecured claims. Fed. R. Bankr. P. 3018(d) provides: "A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities."

V. VOTES NECESSARY TO CONFIRM THE PLAN

The Court may confirm the Plan if at least one noninsider impaired class of claims has accepted and certain statutory requirements are met as to both nonconsenting members within a consenting class and as to dissenting classes. A class of claims has accepted the Plan when more than one-half in number and at least two-thirds in amount of the allowed claims actually voting, vote in favor of the Plan. A class of interests has accepted the Plan when at least two-thirds in amount of the allowed interests of such class actually voting have accepted it. It is important to remember that even

if the requisite number of votes to confirm the Plan are obtained, the Plan will not bind the parties unless and until the Court makes an independent determination that confirmation is appropriate. That is the subject of any upcoming confirmation hearing.

VI. INFORMATION REGARDING VOTING IN THIS CASE

The bar date for filing a proof of claim in this case was November 1, 1999. The bar date for objecting to claims will be the Effective Date.

In this case the Proponent believes that Classes 23, 24, 27 and 28 are impaired and therefore entitled to vote. Classes 1 through 22, 25, 26, and 29 are unimpaired and therefore do not vote. A party that disputes the Debtors' characterization of its claim or interest as unimpaired may request a finding of impairment from the Court in order to obtain the right to vote.

Ballots must be received by the Debtors, addressed to:

Stuart Wald, Esq.
Jeffer, Mangels, Butler & Marmaro LLP
2121 Avenue of the Stars, 10th Floor
Los Angeles, CA 90067

by the close of business (5:00 p.m.) on February 25, 2000.

VII. DESCRIPTION OF THE DEBTORS, PAST AND FUTURE BUSINESS AND THE EVENTS PRECIPITATING THE BANKRUPTCY FILINGS

Rita is an 88-year old widow whose late husband, Sanford Hornwood, was a respected attorney, author and judge.[1] Since his death, Rita has continued, with the assistance of family members and professionals, to oversee the business operations of the assets and entities that she purchased and developed both before and after her husband's death, primarily income-producing real properties. Many of these assets are property of the Hornwood Revocable Family Trust dated September 2, 1993 (the "9/2 Trust") or of partnerships whose interests are owned in part by the 9/2 Trust.

Steven is one of Rita's sons. Roberta is Steven's wife and Rita's daughter-in-law. Steven and Roberta are involved in a variety of real estate investments, some in connection with Rita Hornwood, and others without her. Many of these investments are owned by the Hornwood Revocable Family Trust dated September 10, 1993 (the "9/10 Trust").

Rick Leasing is a Nevada corporation that owns partnership interests in various retail and real estate partnerships in Nevada and California. The 9/2 Trust is the 100% owner of Rick Leasing, and Rita is its president.

Sylmar is a limited partnership that, as of the commencement of these chapter 11 bankruptcy cases, owned

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[1] *See, e.g.*, S. Hornwood, Systematic Settlements (1972).

the Sylma- Square shopping center located at 13710-13778 Foothill Boulevard in Sylmar, California (the "Sylmar Property"). Rick Leasing is Sylmar's sole general partner. All of the limited partnership interests in Sylmar are held by the 9/2 Trust and the 9/10 Trust.

What follows is a brief summary of the dates and circumstances that led the Debtors to file chapter 11 petitions. On or about December 9, 1992, Rita and Sanford Hornwood and Steven and Roberta all executed a promissory note (the "Note") in the original principal amount of $8,073,237 in favor of Tokai Bank of California ("Tokai Bank"). The Note was secured by a deed of trust on the Sylmar Property. On October 5, 1993, Steven and Roberta transferred their interest in the Sylmar Property to the 9/10 Trust, and Rita and Sanford Hornwood transferred their interest in the Sylmar Property to the 9/2 Trust. Tokai Bank was notified and the applicable paperwork was recorded for documentation of these transfers. Sanford Hornwood passed away in August 1996.

On October 8, 1997, Steven and Roberta, acting as trustees of the 9/10 Trust, transferred that trust's interest in the Sylmar Property to Sylmar. That same day, Rita, acting as trustee of the 9/2 Trust, also transferred that trust's interest in the Sylmar Property to Sylmar.

From the original execution of the Note in December 1992, through 1998, the Hornwoods maintained close contact with Tokai Bank relative to the Note and the operation of the Sylmar Property. Most of this contact was carried on by Sanford Hornwood until his death. Tokai Bank took over the

leasing of the Sylmar Property locations in 1993. After August 1996, Roberta and Rita took over the job of dealing and communicating with Tokai Bank. The Hornwoods felt secure in their relations with Tokai Bank and thus sought assistance from it with regard to the operations of the Sylmar Property after Sanford Hornwood's death.

In March 1998, a meeting was held at Tokai Bank involving Rita, Roberta, various officers of Tokai Bank, and a loan broker named Joseph Michael. The participants at the meeting discussed the fact that the Sylmar Property was not generating enough positive cash flow to cover its existing operational expenses, property taxes, and its debt service to Tokai Bank. As of the time of that meeting, the December 1997 property tax installment had not been paid, another tax installment was coming due, and Rita had already been covering the debt service to Tokai Bank for many months from her rapidly decreasing personal funds.

Tokai Bank, acting through its officers who attended that March 1998 meeting, instructed Rita and Roberta to apply future rent receipts from the Sylmar Property towards curing the property tax delinquency, making timely payment of the next tax installment, and maintaining and improving the Sylmar Property to enhance both its rental cash flow and eventual sale value, even if that meant that no monthly payments would be made to Tokai Bank for the next six months. When Rita and Roberta asked for clarification of these instructions from the Tokai Bank officials, those officers said that the missed payments would not increase the loan balance and that there would be a moratorium on declaring

any default on the Note. The Tokai Bank officers said that Rita had "bled enough."

Tokai Bank also requested that the Hornwoods sell the Sylmar Property as soon as possible. To conclude the March 1998 meeting, Rita handed a check in the amount of $75,000 to the Tokai Bank officers, who applied the proceeds of the check on Tokai Bank's account against the outstanding amount of the Note. On April 1, 1998, Rita sent a letter to Tokai Bank confirming that the outstanding property taxes were being paid as requested at the March meeting. The Hornwoods also promptly commenced a search for a purchaser for the Sylmar Property in accordance with Tokai Bank's wishes, and Sylmar soon signed a listing agreement with Marcus & Millichap, real estate brokers. But only three months after the March 1998 meeting, Tokai Bank declared a default on the Note and recorded a notice of default. Tokai Bank then (on or about June 23, 1998) commenced a judicial foreclosure action in Superior Court (the "Judicial Foreclosure Action"), and had a receiver, Thomas McAndrews (the "Receiver") appointed. The Receiver immediately took possession of and control over the Sylmar Property and its generated rent receipts.

In July 1998, the Hornwoods were first contacted by two real estate brokers acting on behalf of Allen Alevy. On July 29, 1998, one of these brokers, William Mulkey, faxed an offer from Mr. Alevy to the Hornwoods for the purchase of the Sylmar Property for $8 million. This offer included a financial statement showing the Mr. Alevy had a net worth of $69.5 million dollars, including an "investment" interest in Platinum Capital, Inc. ("Platinum") in the amount of $1.15

million. In light of Mr. Alevy's financial statement, the Hornwoods entered into negotiations with Alevy, both as an individual and as a representative of his company, Amusement Industry, Inc. ("Amusement") for the purchase of the Sylmar Property. Part of the Hornwoods' motivation was their belief that, with their aid, Alevy would be able to purchase the Tokai Note at a discount.

On August 5, 1998, Mr. Alevy sent an agreement (the "Letter Agreement") to the Hornwoods on the letterhead of another one of his companies, Alevy & Associates. The Letter Agreement, signed by Alevy both individually and as a representative of Amusement, provided that upon Alevy's acquisition of both the Note and the Sylmar Property, the Hornwoods (Rita, Steven and Roberta) would be released from their personal liabilities under the Note, and the Judicial Foreclosure Action commenced by Tokai Bank would be dismissed with prejudice. The Letter Agreement specifically provided that "Buyer [Mr. Alevy] to pay Tokai Bank the sum of Seven Million Dollars ($7,000,000.00). Tokai Bank to release Rita, Steve and Roberta Hornwood from all liabilities and to cancel the judicial foreclosure on said property."

The Hornwoods faxed their acceptance of the Letter Agreement to Alevy on August 5, 1998. Between August 5 and August 14, 1998, Alevy and various individuals employed by him commenced their due diligence in connection with his planned acquisition of the Sylmar Property. Based on this due diligence, Alevy stated that he wanted to proceed quickly with the acquisition of the Note because he planned on making substantial renovations to the Sylmar Property, and requested that the Hornwoods agree to modify the Letter Agreement and

provide an additional $300,000 in consideration, in addition to the transfer of the Sylmar Property itself. In return for Alevy promising to waive all contingencies provided for in the Letter Agreement, the Hornwoods agreed to the $300,000 modification.

On August 14, 1998, a written agreement (the "Non-Recourse Agreement") was executed by Rita and Alevy which provided for the $300,000 contribution and further clarified the non-recourse provisions of the Letter Agreement. For example, paragraph 6 of the Non-Recourse Agreement provides: "In consideration for Seller (Rita Hornwood) making the Contribution, Buyer [Mr. Alevy or his assignee] agrees to cancel the Note and return it to Seller upon closing the escrow to buy the center [the Property], and not to seek any deficiency against Seller, any member of her family, or any entity associated with Seller."

Based on the execution of the Letter Agreement and Non-Recourse Agreement, the Hornwoods discussed with Alevy Tokai Bank's interest in selling the Note for $7 million and how they could help facilitate that sale. The Hornwoods then introduced Alevy to Michael Green, one of Tokai Bank's vice-presidents. Shortly thereafter, Alevy made an offer to purchase the Note for $6.9 million. After brief negotiations, this offer went up to $7 million. On September 8, 1999, Alevy executed a formal Note Purchase Agreement with Tokai Bank in which it was agreed that he would purchase the Note for $7 million. An escrow was shortly thereafter opened with Investors Title Company, and Amusement deposited $100,000 into the escrow account.

Soon after he made his agreement with Tokai Bank, Alevy began to demand changes to the Non-Recourse Agreement to provide for a larger contribution by the Hornwoods. When these efforts did not succeed, Alevy grew hostile, began to make threats to Rita and Roberta, and sought to deny the very existence of the Letter Agreement and the Non-Recourse Agreement. Specifically, in September 1988, Alevy stated over the telephone to Roberta that if the Hornwoods did not pay him more money, he (Alevy) would assign the Note to a different company (such as Platinum) to avoid the written agreements and argue that the new holder would not be subject to defenses that might apply against Alevy directly. Contemporaneously with that telephone exchange, Roberta made the notes of Alevy's threats, that "if you don't go [sic] more money, I'll foreclose judicially and take all your assets. I don't care about our agreement of August 14 (the Non-Recourse Agreement). I want more money...I'll sell [the] Note for $4 million and go after your mom (Rita) for $4 million or $5 million. We have no contract. The contract was a mistake..."

Alevy then began his scheme to circumvent his written agreements by allegedly assigning his interests to Platinum. At all relevant times, however, Alevy continued to seek the economic benefits of the Note and in effect controlled Platinum. As previously noted, Alevy's own financial statements confirmed that he had a $1.15 million investment interest in Platinum. On October 15, 1998, Alevy, on behalf of Platinum, sought a loan from Fremont Investment & Loan to purchase the Note from Tokai Bank, even though the escrow deposit had been made by another company, Amusement. On or about December 7, 1998, Alevy executed

an "assignment" purportedly assigning his interest in the Note Purchase Agreement to Platinum. This "assignment" was for no consideration and merely stated that Alevy was "unable to continue under the [Note Purchase Agreement] and desires to assign his rights, title and interest under the [Note Purchase Agreement] to Platinum." Despite this assignment, however, Alevy continued to be involved on Platinum's behalf. On or about December 15, 1998, Alevy sent a letter to Andrew Clare of Loeb & Loeb, who was then acting as the Hornwoods' state court counsel, stating that "[i]f the Hornwoods pay [Alevy] seven hundred thousand dollars in the next 24 hours, then [Alevy] will not pursue the deficiency judgment."

On or about December 21, 1998, as part of his efforts to purchase the Note, Alevy had his company Amusement advance over $720,000 in cash to Tokai Bank, and he, his wife, and Amusement borrowed an additional $6 million+ from Farmers & Merchant Bank. On December 22, 1998, Alevy, on behalf of Platinum, purchased the Note from Tokai Bank. On December 28, 1998, the Superior Court approved a stipulation (one not approved by the Hornwoods) substituting Platinum in place of Tokai Bank in the Judicial Foreclosure Action, and the Hornwoods filed a motion to amend " their answer to raise the issue of the Non-Recourse Agreement as an affirmative defense. The Superior Court granted leave, and the Hornwoods then filed an amended answer. On January 8, 1999, Platinum filed a notice with the California Secretary of State changing its principal place of business from the offices of Alevy & Associates and Amusement (6665 Long Beach Boulevard in Long Beach) to

a residential address belonging to Marilu Garcia, one of Alevy's employees.

Throughout these proceedings, the Hornwoods continuously attempted to comply with the terms of the Letter Agreement and the Non-Recourse Agreement by tendering $300,000 and a title deed to the Sylmar Property to either Alevy, Platinum, their successors or assigns, or the escrow company handling the purchase of the Note by Alevy. Alevy and Platinum rejected the $300,000 and the deed. On March 4, 1999, after receiving leave from the Superior Court, Sylmar and the Hornwoods filed a cross-complaint for (1) breach of contract; (2) tortious interference with contractual relations; (3) breach of the implied covenant of good faith and fair dealing; (4) intentional misrepresentation; (5) negligent misrepresentation; and (6) conspiracy. Prior to Platinum's answer, Sylmar and the Hornwoods amended their Cross-Complaint.

The Superior Court bifurcated its consideration of the Judicial Foreclosure Action and the Cross-Complaint, and dealt with them in sequence. From May Ii through May 13, 1999, trial was held on Platinum's complaint in the Judicial Foreclosure Action.[2] On June 17, 1999, the Superior Court issued its "Statement of Intended Decision" indicating its intention to grant Platinum an interlocutory judgment of foreclosure. The next day, June 18, 1999, Sylmar filed its

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[2] The Debtors first consulted bankruptcy counsel, the offices of Jeffer, Mangels, Butler & Marmaro LLP, on or about May 14, 1999.

chapter 11 petition. Rita and Steven and Roberta followed on July 21, 1999 and July 23, 1999, respectively. On July 30, 1999, Platinum and other cross-defendants filed a demurrer against the Cross-Complaint. The demurrer did not request that the Hornwoods and Sylmar be denied leave to amend the Cross-Complaint, but on August 25, 1999, the Superior Court granted the demurrer without granting leave to amend. The Hornwoods and Sylmar, now represented by the Law Offices of Gordon Gitlen, moved the Superior Court to reconsider its ruling and allow them to file their Second Amended Cross-Complaint, but the Superior Court denied reconsideration and clarification of its rulings by orders entered on October 7 and October 22, 1999. On October 27, 1999, Sylmar and the Hornwoods timely appealed from the granting of the demurrer without leave to amend and the denial of reconsideration of this decision.

On October 13, 1999, the Debtors filed an adversary proceeding in this Court, objecting to Platinum's claims and asserting counterclaims against Alevy, Amusement and Platinum, including: (1) breach of joint venture; (2) breach of fiduciary duty; (3) unjust enrichment; (4) breach of implied covenant of good faith and fair dealing; (5) equitable subrogation; (6) equitable subordination; (7) intentional interference with contract; (8) intentional interference with prospective business advantage; (9) fraud; (10) promise without intent to perform; (11) constructive fraud; (12) suppression of facts; (13) recovery of note and constructive trust; (14) cancellation of instrument; and (15) conspiracy. The Adversary Complaint stated, among other facts, that Sylmar, the Hornwoods, Alevy, and his controlled entities entered into a joint venture agreement whereby, among other

things, Sylmar and the Hornwoods would facilitate the sale of the Note (and accompanying deed of trust) to Alevy for $7 million, the Hornwoods would contribute $300,000 to the purchase price, and upon transfer of the Note to Alevy the Hornwoods would no longer have any personal liability under it.

On October 27, 1999, the Court heard Platinum's motion for relief from stay against Sylmar so that Platinum could proceed in state court with regard to the Judicial Foreclosure Action against Sylmar and the Sylmar Property. The Court ruled from the bench that Platinum would receive relief from stay as of December 1, 1999. The Debtors filed a motion with the Court for the Court to approve the sale of the Sylmar Property for the sum of $7 million to Constantino Noval, subject to overbids, and the Court approved the sale (over Platinum's objection) on November 24, 1999. Based on this sale motion, the Debtors also asked the Court to reconsider the grant to Platinum of relief from the automatic stay. On December 1, 1999, the Court signed and entered an order approving the sale of the Sylmar Property, and also modified its prior ruling to allow the Debtors to have until December 17, 1999 to consummate the sale of the Sylmar Property, and only then (if the sale were not consummated) would Platinum have relief from the stay to resume its Judicial Foreclosure Action against the Sylmar Property. Platinum also filed a relief from stay motion to obtain relief to resume the Judicial Foreclosure Action against all of the individual Debtors. All of the individual Debtors opposed this motion, and the Court denied it without prejudice at a hearing held on December 29, 1999.

Also on December 1, 1999, the Court ruled that it was abstaining with regard to the Debtors' adversary proceeding against Platinum et al., and dismissed the Debtors' complaint in favor of the pending state court proceeding where the Debtors have appealed from the Superior Court's dismissal of the Cross-Complaint and the denial of reconsideration thereof. The Court stated that the Debtors were free to bring on an objection to Platinum's claims based on bankruptcy issues, and on December 15, 1999, the Debtors filed their "Objection To The Proofs Of Claim Filed By Platinum Capital, Inc.; Allen Alevy; Alevy & Associates; And Amusement Industry, Inc." based on the improper inclusion in these claims of default interest, excessive legal fees and costs, and other improper charges and assessments. A hearing before the Court is scheduled on this Objection for January 19, 2000 at 9:30 a.m.

At a hearing held before the Court on December 15, 1999, the Court denied Platinum's motion to have the bankruptcy case of Steven and Roberta Hornwood dismissed. A conforming form of order was entered by the Court on January 4, 2000. A parallel motion made by Platinum to have Rita Hornwood's case dismissed was continued (by agreement of the parties) until January 19, 2000, but on January 7, 2000, Platinum gave notice that it was withdrawing the motion.

On December 16, 1999, the Debtors consummated the sale of the Sylmar Property, free and clear of liens, to Constantino Noval for the sum of $7 million in cash. This completed the sale that the Court had approved at the November 24, 1999 hearing.

On December 28, 1999, the Court entered orders approving the Debtors' application to retain the Law Offices of Gordon Gitlen as their special counsel with regard to the state court litigation with Platinum.

On December 29, 1999, the Court granted the Debtors' motion to extend their exclusive period within which to solicit acceptances of a plan of reorganization to March 31, 2000.

On December 30, 1999, the Debtors filed an application to have the Court approve the employment and payment of Carlton Financial with regard to its work as a real estate broker in connection with the sale of the Sylmar Property. A hearing on the application is set before the Court on January 26, 2000.

What follows is a brief description of the Debtors' business and future business plans. Further details relating to the Debtors' financial condition and post-confirmation operation of the Debtors are found in sections X, XI, XII, XIV and XV.

While the Debtors are involved in a wide variety of real estate investments, most of these operations (conducted through various partnerships) are profitable and current on all of their obligations. Unsecured debts are either being paid over time in accord with their contractual terms, or they only constitute the month or so of periodic payments (such as a utility bill) that came due post-petition for pre-petition goods and services. As such, the Debtors intend to emerge from bankruptcy by selling the Sylmar Property (a step that has

been fully consummated), paying the claim of Platinum in full in an amount to be determined by the Court, paying all of their minor pre-petition unsecured debts in full, and going on with their normal business affairs otherwise unaffected by this Plan.

VIII. CRITICAL PLAN PROVISIONS

Listed below are the sources of money earmarked to pay creditors and interest-holders.

Under this Plan, the Debtors intend to: 1) utilize the proceeds from the sale of the Sylmar Property; and 2) raise additional cash from the liquid and convertible (publicly traded) assets of the Debtors' estates, their non-debtor partnerships (whose equity interests are owned by their respective trusts) and directly from the 9/2 and 9/10 Trusts to pay all of the claims in full that are due to be paid on the Effective Date and those that are due to be paid within one year after the Effective Date. This process may include the sale of the Charland Square property and potentially a loan from NAMCO (the entity which financed the sale of the Sylmar Property) likely to be secured by assets of the non-debtor partnerships. All claims that are both (1) being left unimpaired, and (2) which are not being paid in full on the Effective Date, will continue to be serviced from the same sources (non-debtor partnerships and the 9/2 and 9/10 Trusts) that have made the required periodic payments to these creditors in the past.

General unsecured creditors whose claims have matured prior to the Effective Date can expect payment in full

(along with post-petition interest) within one year from the Effective Date, unless some other treatment is specified for the claims of an individual creditor under the Plan. General unsecured creditors whose claims have not matured can generally expect payment over time in accord with their individual contractual agreements with the Debtors, unless some other treatment is specifically delineated in this Plan.

IX. DESCRIPTION AND TREATMENT OF CLAIMS

a. Overview of Plan Payments

Below is a summary of who gets paid what and when and from what source. The identity of members within a particular class is explained beginning on the next page. The second column lists two amounts. First, the amount of each payment, or if only one is to be made, then that amount; second, the total amount that will be paid. The Proponent is usually not required by law pay an unsecured creditor or interest holder everything it would otherwise be entitled to had a bankruptcy case not commenced. In these cases, however, the Debtors will not only make payments in full to all creditors, but will also pay post-petition interest to compensate those creditors for any delays in the payment of their claims. The "Payment Due Date" column states the frequency with which payments will be made and the starting and ending dates. Look at the starting date to figure out who will be paid before and after you and in what amount. The "Source of Payment" column describes the expected source of payment. Further details regarding the source of payment are found in sections X and XI.

The timing of payments to many creditors is determined by the "Effective Date." Administrative claims, unless otherwise stated, must be paid by the Effective Date. The timing of payments to impaired creditors is measured from the Effective Date. In this case, the Effective Date is the first business day (not a Saturday, Sunday, or federal holiday) that is more than ten (10) calendar days after the entry of an order by the Court confirming this First Amended Joint Plan of Reorganization, where such order is not subject to any pending appeal or with respect to which all appeals have concluded resulting in the affirmance of said order. The Debtors may waive any condition of finality of the Confirmation Order as a condition precedent to the Effective Date by filing a written "Notice of Effective Date" with the Court and the Office of the United States Trustee at any time after entry of the Confirmation Order.

FOLD OUT EXHIBIT

OVERVIEW OF PLAN PAYMENTS

Payment Recipient	Total Amount To Be Paid	Payment Due Date	Expected Source Of Payment
1. Jeffer, Mangels, Butler & Marmaro LLP	$125,000 (estimated)	Later of Effective Date and entry of Court order allowing payments	Cash raised from non-debtor partnerships and 9/2 and 9/10 Trusts, Estate funds
2. Wynne Spiegel Itkin, A Law Corporation	$350,000 (estimated)	Later of Effective Date and entry of Court order allowing payments	Cash raised from non-debtor partnerships and 9/2 and 9/10 Trusts, Estate funds
3. Law Offices of Daniel Mintz	$45,000 (estimated)	Later of Effective Date and entry of Court order allowing payments	Cash raised from non-debtor partnerships and 9/2 and 9/10 Trusts, Estate funds
4. Law Offices of Gordon Gitlen	$15,000 (estimated)	Later of Effective Date and entry of Court order allowing payments	Retainer
5. Marshack, Shulman and Hodges	$20,000.00 (estimated)	Effective Date	Cash raised from non-debtor partnerships and 9/2 and 9/10 Trusts, Estate funds
6. Class 1	$0	Effective Date	Cash raised from non-debtor partnerships and 9/2 and 9/10 Trusts, Estate funds
7. Class 2	$0	Effective Date	Proceeds from Sale of Sylmar Property
8. Class 3	$unknown	When due under state law	Deposits held by Receiver transferred to purchaser of Sylmar Property
9. Class 4	$3,028.27 monthly	When due under loan agreement	9/2 Trust, Estate funds
10. Class 5	$1,809.79 monthly	When due under loan agreement	9/2 Trust, Estate funds
11. Class 6	$0	Effective Date	9/2 Trust, Estate funds
12.Class 7	$457.88 monthly	When due under loan agreement	9/2 Trust, Estate funds
13.Class 8	$489.19 monthly	When due under loan agreement	9/10 Trust, Estate funds

14.Class 9	$500.00 monthly	When due under loan agreement	9/10 Trust, Estate funds
15.Class 10	$242.00 monthly	When due under loan agreement	9/10 Trust, Estate funds
16.Class 11	$2,441.89 monthly	When due under loan agreement	9/10 Trust, Estate funds
17.Class 12	$87,400 claimed, to be determined by objection to claim	When due under loan agreement	9/10 Trust
18.Class 13	$6,194,147.98 claimed, to be determined by objection to claim	When due under loan agreement or on Effective Date, whichever is later	9/2 Trust, 9/10 Trust, Estate funds
19.Class 14	Contingent	When due under loan agreement or on Effective Date, whichever is later	9/10 Trust
20.Class 15	Contingent	When due under loan agreement or on Effective Date, whichever is later	9/10 Trust
21.Class 16	Unknown	When due under state law or on Effective Date, whichever is later	Litigation recoveries
22.Class 16a	Unknown	When due under state law or on Effective Date, whichever is later	Litigation recoveries
23.Class 17	Contingent	When due under loan agreement or on Effective Date, whichever is later	9/10 Trust
24.Class 18	Contingent	When due under loan agreement or on Effective Date, whichever is later	9/10 Trust
25.Class 19	$7 million	Effective Date	Proceeds from sale of Sylmar Property and cash collateral presently held by Receiver

26.Class 20	$3.2 million claimed, To Be Determined by Objection to Claim and Confirmation Cure	Effective Date	9/2 Trust, 9/10 Trust, Estate funds
27.Class 21	$0	Later of Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
28.Class 22	$7,762 claimed, To Be Determined By State Court Litigation	Later of Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
29.Class 23	$47,674 claimed, To Be Determined By Objection To Claim and State Court Litigation	Later of 1 year after Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
30.Class 24	$124,424.90, To Be Determined By Objection To Claim And State Court Litigation	Later of 1 year after Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
31.Class 25	To Be Determined By State Court Litigation	Later of Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
32.Class 26	To Be Determined By Objection to Claim	Later of Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
33.Class 27	$35,000 (estimated)	Later of 1 year after Effective Date and entry of Court order	9/2 Trust, 9/10 Trust, Estate funds
34.Class 28	$unknown	Later of when due under state law and the date by which all claims due to be paid under this Plan within one year of the Effective Date have been paid in the full amounts allowed by the Court	9/2 Trust, 9/10 Trust, Estate funds
35.Class 29	Exis..ng partnership interests	Effective Date	

The Debtors reserve the right to provide substitute sources of funds to make all payments due on the Effective Date and within one year from the Effective Date.

All claims listed below are undisputed unless otherwise stated. On the date that payment on a disputed claim is due under the Plan, or on such other date as the Court orders, Roberta Hornwood (acting as the Disbursing Agent under this Plan) will deposit into a segregated account (the "Reserve Account") an amount of cash equal to the payment due on that disputed claim, or will perform such other treatment as the Court orders, in place of such payment to the holder of said disputed claim. Cash together with interest accruing thereon will be held in trust for the benefit of holders of disputed claims. If and when a disputed claim becomes allowed, the Disbursing Agent for this Plan will distribute to the holder thereof an amount equal to 100% of its claim plus accrued interest thereon. If a surplus arises from the fact that not all claims are allowed, then that money shall revert back to the Debtors.

No claimant or interest holder is an affiliate of the Debtors unless otherwise stated.

Below is a detailed description and treatment of claims and interests

b. Administrative Expenses

1. These include the "actual, necessary costs and expenses of preserving the estate" as determined by

the Court after notice to creditors of a request for payment and after a hearing thereon.

2. The Code requires that allowed administrative expenses be paid on the Effective Date unless the party holding the administrative expense agrees otherwise.

Administrative Claim #1.

Claimant: Jeffer, Mangels, Butler & Marmaro LLP, attorneys for Rita Hornwood. $125,000 (est.) plus retainer of $6,773.04, subject to Court approval.

Administrative Claim # 2.

Claimant: Wynne Spiegel Itkin, A Law Corporation, attorneys for Steven and Roberta Hornwood. $350,000 (est.) plus retainer of $20,971.17, subject to Court approval.

Administrative Claim #3.

Claimant: Law Offices of Daniel Mintz, attorneys for Sylmar Plaza, L.P. $45,000 (est.) plus retainer of $6,065.00, subject to Court approval.

Administrative Claim #4.

Claimant: Law Offices of Gordon Gitlin, special litigation counsel for Debtors. $15,000 (est.) subject to Court approval. Claimant possesses a retainer of $50,000.

Administrative Claim #5.

Claimant: Marshack, Shulman & Hodges, counsel for the receiver of the Sylmar Property. $20,000.00 (estimated)

TOTAL $555,000

c. Unsecured Tax Claims

These include certain types of property, sales, and income taxes. The Code requires that the holders of such claims receive cash payments over a period not exceeding six years after the date of assessment of such claim, unless agreed otherwise. The total cash payments must have a present value equal to the amount of the allowed claim. The amount of the allowed claim includes the amount of tax owed plus interest. The present value is calculated as of the Effective Date. The Debtors do not believe that any such claims exist.

d. Classified Claims

With regard to all Classes of Claims listed as unimpaired pursuant to 11 U.S.C. § 1124(1), the Plan leaves unaltered the legal, equitable, and contractual rights to which such claims or interest entitles the holder of such claim or interest. With regard to all Classes of Claims listed as unimpaired pursuant to 11 U.S.C. § 1124(2), notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default, the Plan: (A) cures any such default that occurred before or after the commencement of the case

under Title 11 of the United States Code, other than a default of a kind specified at 11 U.S.C. § 365(b) (2); (B) reinstates the maturity of such claim or interest as such maturity existed before such default; (C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and (D) does not otherwise alter the legal, equitable or contractual rights to which such claim or interest entitles the holder of such claim or interest.

Class 1: Class 1 consists of all priority claims against the Debtors' estates pursuant to subsections 507(a) (3)-(7) and (9) of the Bankruptcy Code. On the Effective Date, or as soon as practicable thereafter, such Claims shall be paid in cash and in full by the Disbursing Agent, with post-petition interest at the rate of 10% per annum. Allowed Claims in Class 1 are unimpaired, and the Debtors do not believe that any Allowed Class 1 claims exist.

Class 2: Class 2 consists of all real property taxes due and owing with regard to the Sylmar Property to the Los Angeles County Tax Assessor's Office. On the Effective Date, or as soon as practicable thereafter, such Claims shall be paid in full. Allowed Claims in Class 2 are unimpaired pursuant to 11 U.S.C. §§ 1124(1) and (2). No such claims are believed to exist.

Class 3: Class 3 consists of all security deposits paid by tenants of the Sylmar Property which have not come due for return under applicable state law prior to the sale of the Sylmar Property. All of these deposits have been or will be transferred from the Receiver to Constantino Noval, the

purchaser of the Sylmar Property, and the deposit holders shall retain unaltered all of their legal, equitable and contractual rights to the return of said deposits under state law. Class 3 claims are unimpaired pursuant to 11 U.S.C. § 1124(1).

Class 4: Class 4 consists of all allowed claims held by the Bank of America related to its security interest in and first-priority deed of trust against Rita's residence, the real property located at 2030 Bagley Ave. in Los Angeles, California. This Claim, in the current total of approximately $408,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate and be serviced through monthly payments in the amount of $3,028.27.

Class 5: Class 5 consists of all allowed claims held by the Bank of America related to its security interest in and first-priority deed of trust against the real property located at 22833 Macfarlane Dr. in Woodland Hills, California (the "Macfarlane Property"). This real property is owned by Rita and is the residence of Richard Hornwood, Rita's son (not Steven). This Claim, in the current total of approximately $233,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate and be serviced through monthly payments in the amount of $1,809.79.

Class 6: Class 6 consists of all allowed claims for real property taxes due and payable with regard to the Macfarlane Property. On the Effective Date, or as soon as practicable thereafter, such Claims shall be paid in full

including post-petition interest. Allowed Claims in Class 6 are unimpaired pursuant to 11 U.S.C. §§ 1124(1) and (2). No such claims are believed to exist.

Class 7: Class 7 consists of all allowed claims held by Kenneth Seefeld related to his security interest in and first-priority deed of trust against Rita's second residence, the real property located at 68-140 Paseo Real in Cathedral City, California. This Claim, in the current total of approximately $61,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate and be serviced through monthly payments in the amount of $457.88.

Class 8: Class 8 consists of all allowed claims held by CalFarm Life Ins. Co. relating to its loan to Roberta Hornwood (in the approximate current amount of $25,725) and its accompanying security interest in an annuity of Roberta Hornwood (with an approximate current value of $27,662). This Claim is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate and be serviced through quarterly payments in the amount of $489.19.

Class 9: Class 9 consists of all allowed claims held by Washington Mutual Bank, FA, relating to its loan to Steven and Roberta Hornwood (in the current amount of approximately $13,000) with regard to the purchase of a 1998 Jeep Cherokee and its accompanying security interest in the savings account numbered 8762023526-0 at Washington Mutual Bank. This Claim is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear

interest at the contract rate and be serviced through monthly payments in the amount of $500.00.

Class 10: Class 10 consists of all allowed claims held by CDSI Mortgage[3] relating to its security interest in and second-priority deed of trust against Steven and Roberta's residence, the real property located at 245 S. Palm Dr. in Beverly Hills, California. This Claim, in the current total of approximately $46,676, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate and be serviced through monthly payments in the amount of $242.00.

Class 11: Class 11 consists of all allowed claims held by First Nationwide Mortgage relating to its security interest in and first-priority deed of trust against the real property located at 245 S. Palm Dr. in Beverly Hills, California. This Claim, in the current total of approximately $324 000 is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate and be serviced through monthly payments in the amount of $2,441.89.

Class 12: Class 12 consists of all allowed claims held by Jacqueline Wein relating to her alleged security interest in and third and fourth-priority deeds of trust against the real property located at 245 S. Palm Dr. in Beverly Hills,

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[3] CDSI is acting as a servicing agent; the loan was originally made by the Federal Emergency Management Agency.

California. This Claim, in the current total of approximately $87,400, is disputed by Steven and Roberta in its entirety, but to the extent that it may be allowed, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and shall continue to bear interest at the contract rate.

Class 13: Class 13 consists of all allowed claims held by Canada Life Ins. Co. with regard to the liabilities of Steven and Roberta for various debts also owed by Spring Mountain Limited Partnership and secured by its real property. This Claim, which is currently contingent in the approximate amount of $6,150,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1).

Class 14: Class 14 consists of all allowed claims held by Fidelity Federal Bank with regard to Steven and Roberta Hornwood's guaranty of a 1987-1988 loan made to Alcot LP with regard to the real property located at 963 N. Serrano Avenue and 5300 Romaine Street in Los Angeles, California. This Claim, which is currently contingent in the approximate amount of $335,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1).

Class 15: Class 15 consists of all allowed claims held by Highland Federal Bank with regard to Steven and Roberta Hornwood's guaranty of a 1993 loan made to Alcot LP with regard to the real property located at 1151 E. 61st in Los Angeles, California. This Claim, which is currently contingent in the approximate amount of $250,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1).

Class 16: Class 16 consists of all allowed claims of Brent Merritt relating to attorneys' fees owed and liens on recoveries achieved in personal injury litigation brought on behalf of Rita, Steven and Roberta. Class 16 claims, which are unimpaired pursuant to 11 U.S.C. § 1124(1), will be paid in full either: 1) on the Effective Date, with post-petition interest at the rate of 10% per annum, if such claims mature prior to the Effective Date; or 2) when such claims mature in the course of the state court litigation from whence they arise. However, in no circumstance will any distribution be made on account of Allowed Class 16 claims without applications to and orders of the Court employing Mr. Merritt and approving his compensation.

Class 16a: Class 16a consists of all allowed claims of Turner, Aubert & Friedman LLP relating to attorneys' fees owed and liens on recoveries achieved in earthquake damage litigation brought on behalf of Steven and Roberta. Class 16a claims, which are unimpaired pursuant to 11 U.S.C. § 1124(1), will be paid in full either: 1) on the Effective Date, with post-petition interest at the rate of 10% per annum, if such claims mature prior to the Effective Date; or 2) when such claims mature in the course of the state court litigation from whence they arise. However, in no circumstance will any distribution be made on account of Allowed Class 16a claims without applications to and orders of the Court employing Turner, Aubert & Friedman LLP and approving its compensation.

Class 17: Class 17 consists of all allowed claims held by " Wilshire & Associates with regard to Steven and Roberta Hornwood's guaranty of a 1985 loan made to Alcot

LP with regard to the real property located at 963 N. Serrano Avenue in Los Angeles, California. This Claim, which is currently contingent in the approximate amount of $28,000, is unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1).

Class 18: Class 18 consists of all allowed claims held by Washington Mutual Savings with regard to Steven and Roberta Hornwood's guarantees of various loans made to Alcot LP with regard to the real property located at 963 N. Serrano Avenue, 1234 N. Berendo Street, 607 N. Plymouth Blvd., and 1751-1771 Westmoreland in Los Angeles, California. These claims, which are currently contingent in the approximate amount of $1,025,000, are unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1).

Class 19: Class 19 consists of the portion of the allowed claims, if any, held by either Alevy and/or Platinum and/or their related entities that are secured by a lien against the Sylmar Property and/or the cash collateral generated by the Sylmar Property which is currently in the possession of the Receiver. This Claim, whose amount shall be determined by the sale of the Sylmar Property, shall be paid in full on the Effective Date or as soon as practicable thereafter, as the Claim is allowed by this Court with respect to the pending Objection to Claim. Class 19 is unimpaired pursuant to 11 U.S.C. § 1124(2), as the combined treatment of Class 19 and Class 20 shall "cure" the Note.

Class 20: Class 20 consists of the portion of the allowed claims, if any, held by either Alevy and/or Platinum and/or their related entities that are in excess of the value of

the Sylmar Property and the collected cash collateral held by the Receiver pursuant to 11 U.S.C. § 506(a) or which are otherwise unsecured. These Claims, whose amount shall be determined by the Court either in connection with the confirmation of the Plan or through the Objection to Claim proceeding commenced by the Debtors against Platinum and its affiliates, shall be paid in full on the Effective Date or as soon as practicable thereafter when the claims are allowed by a final order of the Court. Class 20 is unimpaired pursuant to 11 U.S.C. § 1124(2), as the combined treatment of Class 19 and Class 20 shall "cure" the Note.

Class 21: Class 21 consists of the allowed claims, if any, of Tokai Bank related to the Note. The Debtors do not believe any that such Claims exist. To the extent that any Allowed Class 21 Claims exist, the amount of such unimpaired claims (pursuant to 11 U.S.C. § 1124(1)) shall be determined by litigation to be brought by the Debtors against Tokai Bank in connection with an objection to such claims.

Class 22: Class 22 consists of the allowed claims of Associates International Insurance Co. which arise out of Superior Court case no. 99E00698, Associates International Insurance Co. v. Steven Hornwood et al. (the "Associates Litigation").[4] Class 22 claims, filed in the amount of $7,762

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[4] The Associates Litigation involves the wrongful claims of an insurance company which issued an insurance policy for the Sylmar Property without the permission and current request of the owner and management. Sylmar and the Hornwoods do not believe that any award will ultimately be made against them in the Associates Litigation.

and disputed by the Debtors, are unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), and the amount of such claims shall be determined through the Associates Litigation.

Class 23: Class 23 consists of the allowed claims of Lana Borsook with regard to legal services rendered on behalf of the Debtors. Class 23 claims (in the filed amount of $47,674), which are impaired under the Plan, shall be paid in full within one year after the Effective Date with post-petition interest at the rate of 10% per annum. It is anticipated that the Debtors will object to the allowance of any Class 23 claims, and that such objection will be followed by a lawsuit to be commenced in an applicable state court within sixty (60) days following the Effective Date.

Class 24: Class 24 consists of the allowed claims of Loeb & Loeb LLP with regard to legal services rendered on behalf of the Debtors. Class 24 claims (in the filed amount of $124,424.90), which are impaired under the Plan, shall be paid in full within one year after the Effective Date with post-petition interest at the rate of 10% per annum. It is anticipated that the Debtors will object to the allowance of any Class 24 claims, and that such objection will be follwed by a lawsuit to be commenced in an applicable state court within sixty (60) days following the Effective Date.

Class 25: Class 25 consists of the allowed claims of 20th Century Insurance Co. which arise out of Superior Court case no. SC033064, 20th Century Insurance Company

et al. v. Steven Hornwood et al.[5] Class 25 claims, which are disputed by the Debtors, are unimpaired under the Plan pursuant to ii U.S.C. § 1124(1), and the amount of such claims shall be determined through case no. SC033064.

Class 26: Class 26 consists of of the allowed claims of Thomas McAndrews, the Receiver of the Sylmar Property. Class 26 claims, which are disputed by the Debtors and unimpaired pursuant to 11 U.S.C. § 1124(1), shall be paid in full (including post-petition interest at the rate of 10% per annum) on the later of (1) the Effective Date; and (2) the entry of an order by the Court allowing the Class 26 claim following the objection of the Debtors to such claims. Such treatment shall apply to the extent that the Receiver is still entitled to compensation on account of his Allowed Claim after consideration of the payments that the Receiver has already received during the pendency of his administration of the Sylmar Property.

Class 27: Class 27 consists of all allowed unsecured claims against the Debtors' estates not otherwise classified under this Plan, including all claims arising from the rejection of unexpired leases and executory contracts. Class 27 claims, which are impaired under the Plan, will be paid in full within one year after the Effective Date with post-petition interest at the rate of 10% per annum. A list of all Class 27 claimants is attached hereto as Exhibit 5.

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[5] This litigation involves a dispute over the amount of premiums due for an automobile insurance policy.

Class 28: Class 28 consists of all claims of insiders as that term is defined at 11 U.S.C. § 101(31), including any and all equitable rights possessed by Richard Hornwood with regard to the Macfarlane Property. All Class 28 claims are impaired in that no distributions may be made on account of such claims until all other distributions due under this Plan on the Effective Date (or to impaired claims within one year of the Effective Date) have either been paid to the respective claimants or into the Reserve Account.

Class 29: Class 29 consists of all equity interests in Sylmar Plaza. Class 29 interests are unimpaired pursuant to 11 U.S.C. § 1124 (i) .

X. SOURCE OF MONEY TO PAY CLAIMS AND INTEREST-HOLDERS

The Plan cannot be confirmed unless the Court finds that it is "feasible," which means that the proponents have timely submitted evidence establishing that the Debtors will have sufficient funds available to satisfy all expenses, including the scheduled creditor payments discussed above. Attached hereto as Exhibit "2" are the Debtors, Amended Schedules of Assets, which include lists of the assets of the 9/2 and 9/10 Trusts, along with additional annotated information demonstrating the Debtors' future financial solvency under the Plan and their ability to make all payments due under the Plan. This additional information relates to those real estate partnerships which, through their positive equity and net cash flow, are sources of payment for the Debtors' obligations under the Plan. The Debtors are in discussions regarding the possible sale of the Charland Square

property (a transaction from which the Debtors expect to generate approximately $700,000 in net proceeds), and they are also contemplating a loan from NAMCO (the entity that financed the sale of the Sylmar Property) that would likely be secured by assets of the related non-debtor partnerships.

On the Effective Date, the Plan will pay, either directly to the claimants or into the Reserve Account, funds equal to the Allowed Claims of Platinum and Alevy in Classes 19 and 20, which the Debtors estimate will total approximately $9.6 million (plus allowed attorneys' fees) as of March 31, 2000. In addition, unless alternative agreements are made, the Debtors will pay a total of approximately $555,000 to the Debtors' professionals and other administrative claimants, subject to the Court's approval of final fee applications.

These funds, apart from those that derive from the sale of the Sylmar Property (approximately $6.8 million) and its accumulated rents (approximately $600,000), will be drawn directly from the cash and other liquid assets of the Debtors, estates, or will be loaned to the Debtors by either the 9/2 and 9/10 Trusts or their non-debtor partnerships. Such a loan from the non-debtor partnerships may be made pursuant to a line or lines of credit secured by the assets of those partnerships. As noted above, the Debtors are in discussions regarding the sale of the Charland Square property and obtaining a loan from NAMCO. The Debtors' estates and the 9/2 and 9/10 Trusts together hold approximately $2 million in cash and negotiable securities. All loans made to the Debtors from the non-debtor partnerships will be treated as Class 28 claims, with repayment barred until all payments due to be made on the

Effective Date or to senior impaired classes have been made. Such loans[6] would be interest-free (with regard to the Debtors) and have a maturity date five (5) years after the Effective Date.

XI. FINANCIAL RECORDS TO ASSIST IN DETERMINING WHETHER PROPOSED PAYMENT IS FEASIBLE

Included in Exhibit "2" are the Debtors, Statements of Assets (as amended), with annotations to provide additional information on the solvency and stability of the Debtors.

XII. ASSETS AND LIABILITIES OF THE ESTATE

a. Assets

The identity and fair market value of the assets of the Debtors' estates are listed in Exhibit "2" so that the reader can assess what assets are available to satisfy claims and to evaluate the overall worth of the respective bankruptcy estates. Whether the Plan proposes to sell any of these assets is discussed in section XVI.

b. Liabilities

Exhibit "1" shows the allowed claims against the estate, claims whose treatment is explained in detail by section VIII. Exhibit "1" is subject to any subsequent order of the Court

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[6] Not including the potential NAMCO loan.

disallowing any claim against the Debtors in whole or in part.

XIII. TREATMENT OF NONCONSENTING CLASSES

As stated above, even if all classes do not consent to the proposed treatment of their claims under the Plan, the Plan may nonetheless be confirmed if the dissenting classes are treated in a manner prescribed by the Code. The process by which dissenting classes are forced to abide by the terms of a plan is commonly referred to as "cramdown." The Code allows dissenting classes to be crammed down if the Plan does not "discriminate unfairly" and is "fair and equitable." The Code does not define discrimination, but it does provide a minimum definition of "fair and equitable." The term can mean that secured claimants retain their liens and receive cash payments whose present value equals the value of their security interest. For example, if a creditor lends the Debtors $100,000 and obtains a security interest in property that is worth only $80,000, the "fair and equitable" requirement means that the claimant is entitled to cash payments whose present value equals $80,000 and not $100,000. The term means that unsecured claimants whose claims are not fully satisfied at least know that no claim or interest that is junior to theirs will receive anything under the Plan. "Fair and equitable" means that each holder of an interest must receive the value of such interest or else no junior interest is entitled to receive anything.

Therefore, if a class of general unsecured claims votes against the plan, the plan cannot be confirmed where the debtors or a class of interest holders (e.g. shareholders or partners) will receive or retain any property under the plan,

unless the plan provides that the class of general unsecured claims shall be paid in full with interest. Similarly, if a class of interest holders votes against the plan, the plan cannot be confirmed where the debtors will receive or retain any property under the plan, unless the plan provides that the class of interest holders shall be paid in full with interest. These are complex statutory provisions and the preceding paragraphs do not purport to state or explain all of them.

Under the Plan, all classes of claims other than Classes 23, 24, 27 and 28 are unimpaired and therefore are presumed as a matter of law to vote in favor of confirmation, and therefore "cramdown" will not be required with regard to these classes. Cramdown will be requested if any of Classes 23, 24, 27 or 28 fail to vote to support the Plan, pursuant to 11 U.S.C. § 1129(b) (2) (B).

XIV. TREATMENT OF NONCONSENTING MEMBERS OF CONSENTING CLASS (CHAPTER 7 LIQUIDATION ANALYSIS)

The Plan must provide that a nonconsenting impaired claimant or interest holder of a consenting class receive at least as much as would be available had the Debtors filed Chapter 7 petitions instead.

In a Chapter 7 case the general rule is that the debtor's assets are sold by a trustee. Unsecured creditors share in the proceeds of sale only after secured creditors and administrative claimants are paid. Certain unsecured creditors get paid before other unsecured creditors do. Unsecured creditors with the same priority share in proportion to the

amount of their allowed claim in relationship to the total amount of allowed claims.

Under the Plan, all claims of creditors (except those classified under Classes 23, 24, 27 and 28) are unimpaired and therefore are presumed to vote in favor of confirmation as a matter of law. Further, all creditors are receiving at least as much under the Plan in Chapter 11 as they would under a Chapter 7 liquidation, because they are receiving payment in full, with post-petition interest, on account of all allowed claims, the maximum that would be allowable under Chapter 7. *See* 11 U.S.C. § 726.

The following figures are all also presented in the table attached hereto as Exhibit "4". If the Debtors' assets were liquidated, the resulting fund would reach totals of $9.4 million (from the proceeds of the sale of the Sylmar Property, the cash held by the Receiver, and the cash and other liquid assets in the Debtors' estates and the 9/2 and 9/10 Trusts)[7], $409,420 (for the net equity in the three real properties in Rita's estate, after applying a 33% reduction for a "firesale"

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[7] This includes $6.8 million in proceeds from the sale of the Sylmar Property, $600,000 in collected rents, approximately $745,000 in cash in Rita Hornwood's estate, approximately $6,000 in securities in Rita Hornwood's estate, approximately $800,000 in securities and $195,000 in cash in the 9/2 Trust, approximately $100,000 in cash and $55,000 in securities (an E-Trade account) in Roberta Hornwood's estate, and approximately $100,000 in cash in related partnerships that is due to be disbursed to the 9/2 Trust and the 9/10 Trust.

and selling costs)[8], $556,100 (for the net equity in the 245 S. Palm property in the 9/10 Trust, subject to the same 33% reduction), and $7,653,711 for the Debtors' share of the net equity in the real property held by the partnerships listed on the opening pages of Exhibit "2" (again subject to a 33% reduction), for a grand total of $18,020,231. This total does not take into consideration any exemption rights of the individual Debtors nor the equitable rights of Rick Hornwood. Against this total would be claims of approximately $10.2 million for Alevy/Platinum (subject to objections and state court litigation), approximately $200,000 in other pre-petition claims (after eliminating those secured claims that would be fully satisfied through the liquidation of the property listed above in this paragraph, and the balance also subject to objections and state court litigation), and approximately $555,000 in administrative claims, for a total of approximately $11 million, leaving about $7 million in equity after the satisfaction of all claims in full in a liquidation context. This does not count the additional administrative costs (of a chapter 7 trustee and his professionals) that would accrue in a liquidation, but even so it is clear that all creditors would be able to receive a 100% distribution on account of their allowed claims.

In order for negative tax consequences from the hypothetical liquidation sales of the non-debtor partnership

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[8] This includes net equities of $292,000 in the Bagley Property, $295,000 in the Macfarlane Property, and $29,000 in the Cathedral City condominium, for a total of $626,000, which reduced by 33% equals $419,420.

properties to totally negate all of the $7 million in excess equity, applying a 28% capital gains tax rate, a total of $25 million in capital gains would have to be realized. When this figure is compared with the facts that all of the properties listed on Exhibit "2" together (including both those owned by the non-debtor partnerships and those owned directly by the Debtors or the family trusts) only have a grand total nominal sale value of $32.674 million, that this figure would have to be discounted both to reflect the Debtors' (through their family trusts) fractional interests in some of the partnerships and by 33% for costs of sale and an emergency liquidation process, and that all of the properties possess at least some tax basis, it is not possible that negative tax consequences could endanger the position of creditors in the event of a liquidation. However, even if negative tax consequences would yield a result of less than payment in full to creditors in a liquidation scenario, that would not change the fact that under the Joint Plan, creditors will receive payment in full, including post-petition interest, on account of their claims. Creditors would thus receive <u>at least</u> as much as they would in a chapter 7 liquidation.

Because all creditors will be receiving a 100% distribution under the Plan, the Plan satisfies the tests prescribed at 11 U.S.C. § 1129(a) (7) to protect the rights of impaired and dissenting creditors, if any impaired creditor in Classes 23, 24, 27 or 28 votes against confirmation of the Plan.

XV. FUTURE MANAGEMENT OF THE DEBTORS AND DISBURSEMENTS UNDER THE PLAN

a. Management of Debtors

After the confirmation of the Plan, the individual Debtors, Rita, Steven and Roberta Hornwood, will continue to manage their own financial affairs. The Hornwoods may retain professionals, such as attorneys, accountants, and property managers, to assist them in these activities. Sylmar, having sold the Sylmar Property and with its sale proceeds and collected rents being utilized in the Plan, no longer has any tangible assets. To the extent that Sylmar still posseses intangible assets such as causes of action (to collect on past unpaid rent and the like), Sylmar will be managed by such professionals as its general partner, Rick Leasing, so designates, and Rick Leasing will be managed by Rita Hornwood.

b. Disbursing Agent

Roberta Hornwood will be responsible for collecting money intended for distribution to claimants and transmitting it to them. She will not receive any compensation for this function, and can be contacted in care of her attorneys at Wynne Spiegel Itkin, A Law Corporation, 1901 Avenue of the Stars, Suite 1600, Los Angeles, California 90067. The phone number is (310) 551-1015.

c. Future Financial Outlook

The Debtors believe that their economic health will be better in the future because the Plan deals with all of their major financial difficulties and liabilities. Once those are resolved through this Plan, all of the Debtors' major remaining liabilities will be both current and fully serviced in the future, in the normal course of business, by profits either directly from the 9/2 and/or 9/10 Trusts or by the Debtors' related non-debtor partnerships. Specifically, as illustrated in Exhibit "2", the Debtors' associated partnerships generate a net monthly income for them in the amount of $81,081.17. To this should be added the individual debtors' monthly income from social security and other pensions ($2,693.32)[9] for a monthly income total of $83,774.49.[10] Without Charland Square, this total would be $80,357.82. Against this total are normal monthly expenses (as listed on their schedules) of $13,160.89 for Steven and Roberta and $27,211.94 for Rita, for a monthly expense total of $40,372.83. The difference of these two figures demonstrates that the Debtors will have a positive monthly cash flow of $43,401.66 ($39,985 without Charland Square), even after the committment of all of their current liquid assets (including those in the 9/2 and 9/10

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[9] This includes monthly payments of $1,748.34 to Roberta Hornwood as her pension, of $861.00 to Rita Hornwood as her Social Security payment, and of $83.98 to Rita Hornwood as her pension.

[10] This does not include the $3,500 monthly income that Steven Hornwood received from Rita Hornwood.

Trusts) .[11] Even presuming on top of the sale of Charland Square that the Debtors will also need to service a $500,000 loan from NAMCO at the rate of 10% per annum (thereby incurring an interest charge of $4,166.67/month), the Debtors will still enjoy a positive monthly cash flow of over $35,818. Therefore, the Debtors are not likely to face either a liquidity nor total liability crisis requiring a return to chapter 11.

Exhibit "2" provides a summary of the assets that will provide the cash flow for the Debtors to complete their obligations for the duration of the Plan. As previously stated, Plan payments due on the Effective Date will come from the proceeds of the sale of the Sylmar Property, the cash held by the receiver of the Sylmar Property, other liquid assets of the Debtors' estates, and the contribution of cash from the 9/2 and 9/10 Trusts. The Debtors are also in discussions regarding the sale of the Charland Square property and a loan from NAMCO. Future payments will be made from the continued operation of the Debtors' businesses. If the businesses generate insufficient funds to provide all of the Plan payments (specifically those related to personal guarantees of partnership debts), then the Debtors will make up the shortfall from the sale of or borrowing against other assets. The Debtors' aggregate financial solvency which is relevant to their ability to honor their commitments to make up any shortfall is demonstrated by the documents attached as Exhibit "2".

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[11] Because of this positive cash flow, since the filing of their bankruptcy petitions the individual Debtors have managed to accumulate approximately $280,000 in the accounts of the 9/2 and 9/10 Trusts and the related non-debtor partnerships.

XVI. SALE OF PROPERTY; ASSUMPTION OF CONTRACTS AND LEASES; OTHER PROVISIONS

The Plan provides for the following:

1) As described in the Plan, the Debtors obtained Court approval to sell the Sylmar Property, as is, free and clear of all liens and interests, to Constantino Noval for the price of $7,000,000 in cash. No overbids were made, and Platinum did not invoke its right to credit-bid to purchase the Sylmar Property pursuant to 11 U.S.C. § 363(k). The sale has been consummated, and the sale proceeds, along with the accumulated rents collected by the Receiver, shall be used to satisfy the Allowed Claims under Classes 2 and 19 in full;

2) No less than twenty five (25) days prior to the hearing on the confirmation of the Plan, the Debtors will file a "List Of Executory Contracts To Be Rejected". The rejection of the contracts on that list shall be effective as of the Effective Date, and the resulting unsecured claims, if any, shall be included in Class 27. All other executory contracts to which the Debtors are parties shall be assumed as of the Effective Date;

3) Disputed Claims are all Claims other than Allowed Claims, including Claims that are scheduled as disputed, contingent or unliquidated in the Debtors, Schedules of Assets and Liabilities, or Claims to which an objection has been filed and which objection has not been withdrawn or determined by a Final Order. On the Effective Date, with regard to all Disputed Claims which otherwise would be paid

in full on the Effective Date, sums equal to the amounts due to be paid on account of those Claims will be deposited into a Disputed Claims Reserve, unless the Court orders otherwise or some other treatment is specified elsewhere in this Plan. To the extent that the objection(s) to such Disputed Claims result in the allowance of such Claims in amounts less than those originally asserted, the property remaining in the Disputed Claims Reserve will be refunded to Rita Hornwood or to such other Debtor or source from whence it originated;

4) The Debtors intend to move to close the Sylmar case shortly after the Effective Date, and the other two cases as soon as possible thereafter in accord with 11 U.S.C. § 350(a). Until these cases are closed, the Debtors shall continue to pay quarterly fees to the Office of the United States Trustee pursuant to the requirements of 28 U.S.C. § 1930(a) (6) under controlling law.

The Court must make certain findings of fact before approving the aforementioned provisions as part of the Plan. The Proponents will request that the Court make the appropriate findings at the confirmation hearing, based upon evidence submitted in support of the confirmation motion.

XVII. BANKRUPTCY PROCEEDINGS

During the pendency of the Debtors' bankruptcy cases, the Court entered orders approving the employment of: Jeffer, Mangels, Butler & Marmaro as counsel for Rita Hornwood on August 17, 1999; Wynne Spiegel Itkin, A Law Corporation as counsel for Steven and Roberta Hornwood on October 1, 1999, and the Law Offices of Daniel Mintz as counsel for

Sylmar on July 22, 1999. On October 1, 1999, the Court entered orders authorizing the joint administration of the Debtors' bankruptcy cases. On December 28, 1999, the Court entered orders approving the employment of the Law Offices of Gordon P. Gitlen as special litigation counsel for the Debtors. On December 1, 1999, the Court entered an order approving the sale of the Sylmar Property. The sale was consummated on December 16, 1999.

No adversary actions or contested motions are currently pending before the Court, with the exception of the objection to the claims of Platinum and its affiliates that will determine the amount of the Allowed Claims in Classes 19 and 20.

XVIII. TAX CONSEQUENCES OF PLAN

For those creditors whose claims are unimpaired under the Plan pursuant to 11 U.S.C. § 1124(1), the Plan should have no tax consequences, as any and all payments that would have been made to them by the Debtors had these chapter 11 cases not occurred will still be made on the same schedule. All other creditors may have various tax consequences, depending in part on whether they are residents of the United States for tax purposes and whether the creditor reports income on the accrual or cash basis method. Holders of Claims will likely recognize gain or loss, as the case may be, equal to the difference between the amount realized under the Plan in respect of their Claims and their respective tax bases in such Claims. Any gain or loss recognized in the exchange will be capital or ordinary income depending upon the status of the Claim in the creditor's hands.

PERSONS CONCERNED WITH THE TAX CONSEQUENCES OF THIS PLAN SHOULD CONSULT THEIR OWN ACCOUNTANTS, ATTORNEYS AND/OR ADVISORS. THE PROPONENT MAKES THE AFOREMENTIONED DISCLOSURE OF POSSIBLE TAX CONSEQUENCES FOR THE SOLE PURPOSE OF ALERTING READERS OF TAX ISSUES THEY MAY WISH TO CONSIDER. THE PROPONENT CANNOT AND DOES NOT REPRESENT THAT THE TAX CONSEQUENCES MENTIONED ABOVE ARE COMPLETELY ACCURATE BECAUSE THE TAX LAW EMBODIES MANY COMPLICATED RULES, WHICH MAKE IT DIFFICULT TO ACCURATELY STATE WHAT THE TAX IMPLICATIONS OF ANY ACTION MIGHT BE.

The tax consequences of the Plan to the Debtors are nominal, in that as the Plan does not forgive any of the debts owed by the Debtors, and as the debts under the Plan are essentially paid as they come due, the Debtors should incur the same net tax obligations as they would outside of chapter 11. The Debtors should not suffer any negative tax consequences from the sale of the Sylmar Property as there was no capital gain on the sale of the Sylmar Property due to the large operational losses incurred.

XIX. EFFECT OF CONFIRMATION OF PLAN

a. General comments

The provisions of a confirmed Plan bind the Debtors, any entity acquiring property under the Plan, and any creditor,

interest holder, or general partner of the Debtors, even those who do not vote to accept the Plan.

The confirmation of the Plan vests all property of the estates in the respective Debtors, other than property (such as the Sylmar Property) which has been sold or otherwise disposed of during the pendency of the chapter 11 cases.

The automatic stay is lifted upon confirmation as to property of the estates. However, the stay continues to prohibit collection or enforcement of pre-petition claims against the Debtors or the Debtors' property until the date the Debtors receive a discharge, if any. If the Debtors do not seek a discharge, the discharge is deemed denied, and the stay as to the Debtors and the Debtors' property terminates upon entry of the order confirming the Plan.

b. Discharge of liability for payment of debts: status of liens; equity security holders

Unless the Debtors are not entitled to receive a discharge pursuant to Code Section 1141(d) (3), the Debtors may obtain a discharge upon confirmation of the Plan by way of entry of the Order confirming the Plan.

c. Modification of the Plan

The Proponents may modify the Plan at any time before confirmation. The Proponents may modify the Plan at any time after confirmation and before substantial consummation, but only if circumstances warrant and after notice and hearing.

d. Post-Confirmation Causes of Action

To the best knowledge of the Proponents, the Debtors' estates have the following causes of action, other than those described elsewhere in this Plan and Disclosure Statement (such as their counterclaims against Alevy and Platinum)[12]: The Debtors intend to bring actions against Lana Borsook and Loeb and Loeb LLP on the basis of their legal malpractice committed in connection with the Debtors' dealings and litigation with Alevy and Platinum et al. Steven and Roberta Hornwood also intend to bring a legal malpractice action against Lana Borsook with regard to her representation of them in connection with litigation against Highland Federal Savings and Loan that was settled pre-petition. The Debtors intend to continue their existing state court litigation with Associates International Insurance Co. and 20th Century Insurance Co. on the same bases as those lawsuits existed prior to the commencement of the Debtors' bankruptcy cases, as well as the litigation involving Roberta Hornwood's worker's compensation claim against the Los Angeles Unified School District (WCAB No. MON0223265), Rita and Roberta Hornwood's personal injury/automobile accident claim against Betty Saliba (Case No. 97T05512), Steven Hornwood's personal injury/automobile accident claim against Dorland Co., located at 5242 S. Washington Blvd. in Los Angeles, and Steven and Roberta's existing claims against Farmers Insurance Group and Truck Insurance Exchange and William

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[12] *See* the treatment of Class 19 on page 37 and the discussion of the adversary action filed against Platinum and Alevy et al. on pages 17-21.

A. Catanese dba Catanese Insurance Services Group et al. for earthquake damages (case No. BC 180271). Steven and Roberta also possess causes of action against Jacqueline Wein for money loaned (which shall likely be resolved as part of the Debtors' objections to Ms. Wein's claims) and against Shiela Williams with regard to monies owed to Steven and Roberta with regard to and relating to the sale of and other transactions involving the real property located at 4931 Doman Ave. in Tarzana, California. The Debtors intend to bring suit against Tokai Bank in connection with it- liabilities for its actions committed and omitted in connection with the Note, the Sylmar Property, and its dealings with Alevy and his affilates. The Debtors further intend to bring suit against/and or object to the claims of Thomas McAndrews, the receiver of the Sylmar Property, and various persons who worked with him, including Douglas Steinreide and Dover Management, over their mismanagement of the Sylmar Property involving the failure to collect payments from tenants for rent, taxes, insurance and common area charges, and with regard to the obstruction of various potential new leases that would have increased the value of the Sylmar Property. Sylmar specifically reserves and retains all of its rights against tenants of the Sylmar Property for monies owed under their respective lease agreements. A copy of the Sylmar Property's rent roll (from the Receiver's report for the month of October 1999) is attached hereto as Exhibit "3".

The Debtors are designated as representatives of their respective estates under Section 1123(b) (3) of the Code and shall have the right to assert any or all of the above causes of action post-confirmation in accordance with applicable law.

e. Final Decree

Once the Plan has been consummated, a final decree may be entered upon motion of the Proponents. The effect of the final decree is to close the Debtors' bankruptcy cases. After such closure, a party seeking any type of relief relating to a Plan provision can seek such relief in a state court of general jurisdiction.

XX. DECLARATIONS OF DEBTORS

The Declarations of Rita Hornwood, Roberta Hornwood, and Steven Hornwood are attached hereto to verify certain financial information attached in the Exhibits to this Disclosure Statement.

Dated: January ___, 2000 Submitted By

JEFFER, MANGELS,
BUTLER & MARMARO
LLP

By:_____
JOSEPH A. EISENBERG, P.C.
Stuart J. Wald, Esq.
Attorneys for Rita Hornwood,
Chapter 11 Debtor and Debtor-In-
Possession

Approved by:

Dated: January ___, 2000 RITA HORNWOOD

By:_____
Rita Hornwood

Dated: January ___, 2000 STEVEN HORNWOOD

By:_____
Steven Hornwood

Dated : January ___, 2000 ROBERTA HORNWOOD

By:_____
Roberta Hornwood

Dated: January ___, 2000 RICK LEASING, INC., general partner of Sylmar Plaza, L.P.

By:_____
Rita Hornwood, President

APPENDIX D

11 USCS § 1129 (2003)

§ 1129. Confirmation of plan

(a) The court shall confirm a plan only if all of the following requirements are met:

(1) The plan complies with the applicable provisions of this title [et seq.].

(2) The proponent of the plan complies with the applicable provisions of this title [et seq.].

(3) The plan has been proposed in good faith and not by any means forbidden by law.

(4) Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

(5) (A) (i) The proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a successor to the debtor under the plan; and

(ii) the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors and equity security holders and with public policy; and

(B) the proponent of the plan has disclosed the identity of any insider that will be employed or retained by

the reorganized debtor, and the nature of any compensation for such insider.

(6) Any governmental regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan, or such rate change is expressly conditioned on such approval.

(7) With respect to each impaired class of claims or interests--

(A) each holder of a claim or interest of such class--

(i) has accepted the plan; or

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title [et seq.] on such date; or

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan an account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

(8) With respect to each class of claims or interests--

(A) such class has accepted the plan; or

(B) such class is not impaired under the plan.

(9) Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that--

(A) with respect to a claim of a kind specified in section 507(a)(1) or 507(a)(2) of this title, on the effective date of the plan, the holder of such claim will receive on

account of such claim cash equal to the allowed amount of such claim;

(B) with respect to a class of claims of a kind specified in section 507(a)(3), 507(a)(4), 507(a)(5), 507(a)(6), or 507(a)(7) of this title, each holder of a claim of such class will receive--

(i) if such class has accepted the plan, deferred cash payments of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) if such class has not accepted the plan, cash on the effective date of the plan equal to the allowed amount of such claim; and

(C) with respect to a claim of a kind specified in section 507(a)(8) of this title, the holder of such claim will receive on account of such claim deferred cash payments, over a period not exceeding six years after the date of assessment of such claim, of a value, as of the effective date of the plan, equal to the allowed amount of such claim.

(10) If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any inside.

(11) Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan.

(12) All fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan.

(13) The plan provides for the continuation after its effective date of payment of all retiree benefits, as that term

is defined in section 1114 of this title, at the level established pursuant to subsection (e)(1)(B) or (g) of section 1114 of this title, at any time prior to confirmation of the plan, for the duration of the period the debtor has obligated itself to provide such benefits.

(b) (1) Notwithstanding section 510(a) of this title, if all of the applicable requirements of subsection (a) of this section other than paragraph (8) are met with respect to a plan, the court, on request of the proponent of the plan, shall confirm the plan notwithstanding the requirements of such paragraph if the plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted, the plan.

(2) For the purpose of this subsection, the condition that a plan be fair and equitable with respect to a class includes the following requirements:

(A) With respect to a class of secured claims, the plan provides--

(i) (I) that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and

(II) that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;

(ii) for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to

attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph; or

(iii) for the realization by such holders of the indubitable equivalent of such claims.

(B) With respect to a class of unsecured claims--

(i) the plan provides that each holder of a claim of such class receive or retain on account of such claim property of a value, as of the effective date of the plan, equal to the allowed amount of such claim; or

(ii) the holder of any claim or interest that is junior to the claims of such class will not receive or retain under the plan on account of such junior claim or interest any property.

(C) With respect to a class of interests--

(i) the plan provides that each holder of an interest of such class receive or retain on account of such interest property of a value, as of the effective date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such interest; or

(ii) the holder of any interest that is junior to the interests of such class will not receive or retain under the plan on account of such junior interest any property.

(c) Notwithstanding subsections (a) and (b) of this section and except as provided in section 1127(b) of this title, the court may confirm only one plan, unless the order of confirmation in the case has been revoked under section 1144 of this title. If the requirements of subsections (a) and (b) of this section are met with respect to more than one plan, the court shall consider the preferences of creditors

and equity security holders in determining which plan to confirm.

(d) Notwithstanding any other provision of this section, on request of a party in interest that is a governmental unit, the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933 [In any hearing under this subsection, the governmental unit has the burden of proof on the issue of avoidance.

APPENDIX E

11 USCS § 1124 (2003)

§ 1124. Impairment of claims or interests

Except as provided in section 1123(a)(4) of this title, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest of such class, the plan--

(1) leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest; or

(2) notwithstanding any contractual provision or applicable law that entitles the holder of such claim or interest to demand or receive accelerated payment of such claim or interest after the occurrence of a default--

(A) cures any such default that occurred before or after the commencement of the case under this title [et seq.], other than a default of a kind specified in section 365(b)(2) of this title;

(B) reinstates the maturity of such claim or interest as such maturity existed before such default;

(C) compensates the holder of such claim or interest for any damages incurred as a result of any reasonable reliance by such holder on such contractual provision or such applicable law; and

(D) does not otherwise alter the legal, equitable, or contractual rights to which such claim or interest entitles the holder of such claim or interest.